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# TEXAS REGISTER

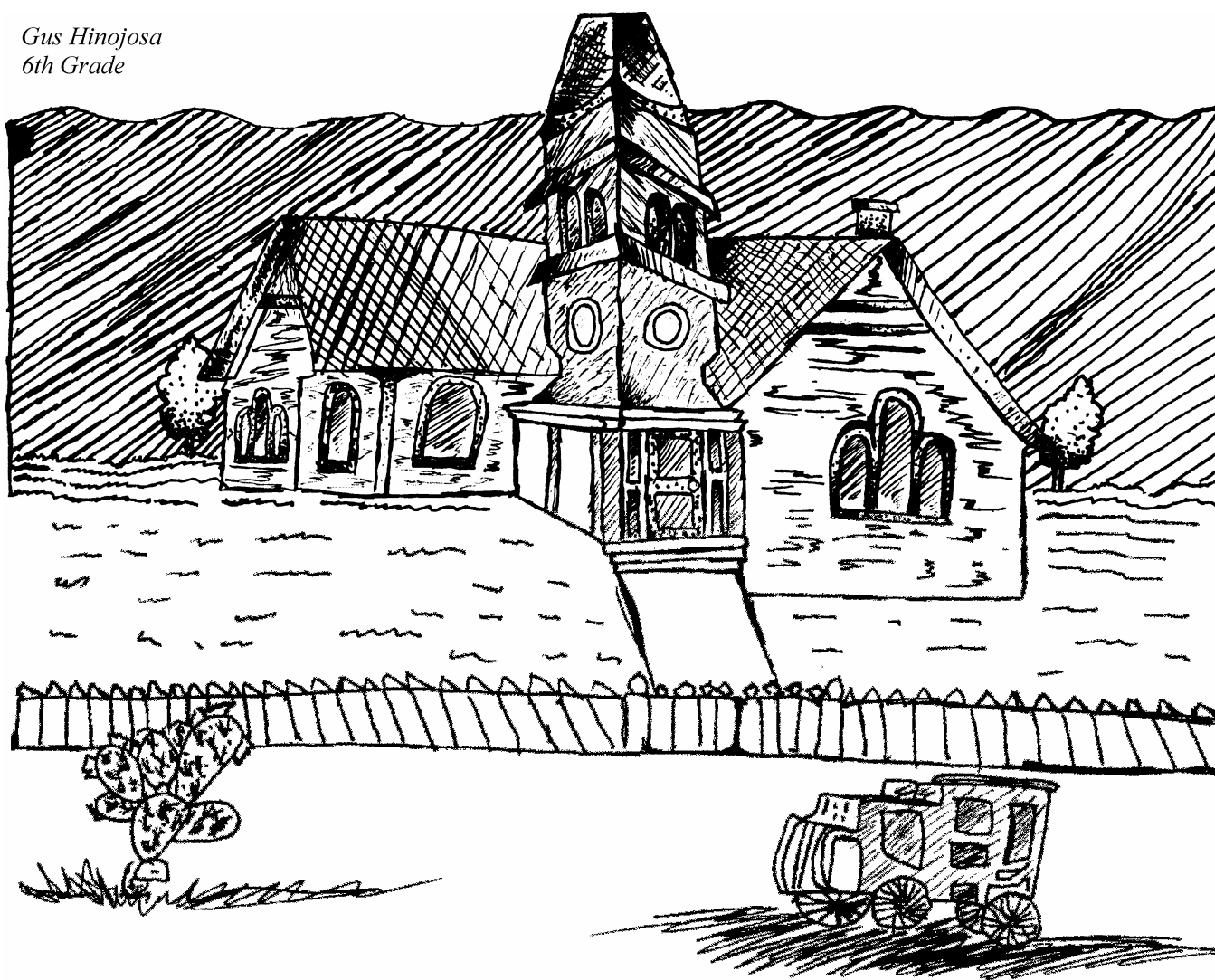
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*Gus Hinojosa  
6th Grade*



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# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
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An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Requests for Opinion

### RQ-0602-GA

#### Requestor:

Mr. James A. Cox, Jr., Chair

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the Texas Lottery Commission may operate a raffle-type game (Request No. 0602-GA)

#### Briefs requested by August 20, 2007

### RQ-0603-GA

#### Requestor:

The Honorable Susan Combs

Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether certain information regarding public employees must be included in the Comptroller's public database of state expenditures (RQ-0603-GA)

#### Briefs requested by August 3, 2007

### RQ-0604-GA

#### Requestor:

The Honorable Jesusa Sanchez-Vera

Jim Wells County Attorney

Post Office Drawer 2080

Alice, Texas 78333

Re: Whether a community supervision and corrections department may permit certain probationers to pay a set fee per hour in lieu of community service not performed (RQ-0604-GA)

#### Briefs requested by August 23, 2007

### RQ-0605-GA

#### Requestor:

The Honorable Will Hartnett

Chair, Committee on Judiciary

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of members of the Texas Senate to remove the president of the Senate (RQ-0605-GA)

#### Briefs requested by August 24, 2007

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200703219

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: July 25, 2007



## Opinion

### Opinion No. GA-0555

The Honorable Carlos Valdez

105th Judicial District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Residency requirements for election to Del Mar College District Board of Regents (RQ-0562-GA)

## SUMMARY

A candidate for election to the Del Mar College District Board of Regents must comply with the six-month residency requirement in Election Code section 141.001(a)(5)(B). Education Code section 130.082(g) does not exempt candidates from the Election Code requirement.

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200703218

Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: July 25, 2007





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 9. LP-GAS SAFETY RULES SUBCHAPTER A. GENERAL REQUIREMENTS

##### 16 TAC §9.10

The Railroad Commission of Texas proposes amendments to §9.10, relating to Rules Examination. The Commission proposes the amendments in response to legislative directives that the Commission recover its costs for providing various services. The proposed amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission proposes to increase the fee for a new employee-level examination to \$40 and the fee for a new management-level examination to \$70. The current fees for these examinations are \$20 and \$50, respectively. The fees were last changed in 1999.

Dan Kelly, Director, Alternative Fuels Research & Education Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. At current rates, in fiscal year 2007 the Commission expects to administer a total of 220 management-level examinations and 3,117 employee-level examinations for LP-gas, CNG, and LNG. At the current rates for exam fees, \$50 and \$20, respectively, the examinations would produce revenue of \$73,340. Based on the proposed increase, the new fees would result in a revenue increase of \$66,740 per year starting in fiscal year 2008. The Commission does not anticipate incurring any additional costs as a result of administering the proposed amendments; the proposed amendments will not change the program itself. The amendments will change the method of finance of the examination program from General Revenue to Appropriated Receipts. Other state agencies will not necessarily incur any additional costs as a result of the proposed amendments, because these agencies' employees who handle LP-gas, CNG, or LNG in the course of their employment are not required to take Railroad Commission rules examinations. However, state agencies that choose to certify these employees will incur an additional cost of \$20 each time one of their employees takes a new examination.

Mr. Kelly has also determined that there may be fiscal implications for local governments whose employees handle LP-gas, CNG, or LNG in the course and scope of their employment. Local governments are not required to have their employees

take the Commission rules examinations, but those local governments that elect to require their employees to do so will incur an additional cost of \$20 for each employee who takes a new examination, if the local government covers the cost of the examination for its employee.

Mr. Kelly has also determined that for each year of the first five years the amendments are proposed to be in effect, the public benefit will be improved transparency in the funding of the Commission's LP-gas, CNG, and LNG examination program and assurance that the Commission is adequately funded to protect the health, safety, and welfare of the general public.

Mr. Kelly has determined that there will be some economic cost to small businesses, micro-businesses, and individuals based on the proposed increase in the fees. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business LPG, CNG, or LNG licensees whose employees or managers are required to take new Railroad Commission examinations will be \$20 additional for each examination. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. The costs for any particular business will vary based on their particular situations.

The Commission assumes that there are LP-gas, CNG, and LNG license holders that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapters 113 and 116, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 01920. The

Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP- gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.088, which requires the Commission to establish reasonable examination fees.

Statutory authority: Texas Natural Resources Code, §§113.051 and 113.088.

Cross reference to statute: Texas Natural Resources Code, Chapter 113; §§113.051 and 113.088.

Issued in Austin, Texas on July 17, 2007.

#### *§9.10. Rules Examination.*

(a) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) - (4) (No change.)

(5) Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is \$70 [§50].

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is \$40 [§20].

(C) - (D) (No change.)

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

TRD-200703029

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas proposes amendments to §§12.147, 12.309, 12.337, 12.395, 12.681, 12.682, 12.688, 12.689, 12.693, and 12.816 relating to Reclamation Plan: Postmining Land Uses; Terms and Conditions of the Bond; Topsoil: Redistribution; Revegetation: Standards for Success; Public Hearing; Review of Notice of Violation or Cessation Order;

Determination of Amount of Penalty; Assessment of Separate Violations for Each Day; Request for Hearing; and Liens.

The Commission proposes these amendments to update provisions of the Texas Coal Mining Regulatory and Abandoned Mine Land Programs. Regarding the proposed amendments to §12.147, the federal Office of Surface Mining Reclamation and Enforcement (OSM) completed a rulemaking in May 1994, deleting the requirement that a permit application contain detailed management plans when range or grazing is proposed as a postmine land use. OSM, in deleting this requirement, concluded that for legitimate economic and/or ecological reasons the actual management plan implemented for the reclaimed area might often vary greatly from the detailed plan originally submitted under this section of the regulations. OSM further stated that the requirements of 30 CFR 780.23(b)(1) (the Texas counterpart is §12.147(a)(1)), should allow for the level of reporting detail necessary for the regulatory authority to determine the feasibility of any proposed range land or grazing land use. The necessary detail required by this regulation has been problematic because the elements defining such plans are highly "perishable" over time. A detailed grazing plan submitted with a permit application most likely will be obsolete prior to its actual implementation, possibly five to ten years after a permit is issued. The proposed change to delete §12.147(a)(2) brings the Commission's rules in line with OSM's regulations for the same reasons OSM revised its regulations.

Concerning §12.309, the Commission's regulation in §12.306(a), relating to Period of Liability, requires that the performance bond continue in force until all reclamation has been completed. Letters of credit used as security for collateral bonds for mining activities must be irrevocable during their terms, pursuant to §12.309(g)(2). Letters of credit have terms that are shorter than the period of reclamation liability and therefore do not provide continuous bond coverage. The federal counterpart to §12.309(g)(2) contains an additional stipulation under the terms and conditions for a letter of credit to ensure continuous bond coverage. A letter of credit would be forfeited if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date. The Commission proposes new wording in §12.309(g)(2) to mirror the federal counterpart and to clarify the consequence that would occur if a replacement bond is not filed and accepted by the Commission at least 30 days before the expiration of the letter of credit. The Commission proposes non-substantive typographical corrections in subsections (j) and (l).

The proposed amendments in §12.337 and §12.395 result from an OSM rulemaking completed in August 2006, which adopted changes to its regulations in response to its revegetation and reforestation, outreach initiative. According to OSM's rulemaking, the revisions will: (1) encourage species diversity on reclaimed land by allowing replacement of soil in variable thicknesses; (2) provide more flexibility to States in using new vegetation success standards and sampling techniques by removing the current requirement that such changes be included in the approved regulatory program; (3) define success standards for lands with an undeveloped land postmining land use; (4) remove shelter belts from the list of postmining land uses subject to success standards; (5) provide more flexibility to operators when they demonstrate compliance with time-in-place requirements by allowing them to consider trees and shrubs in place at bond release, including volunteer trees and shrubs; and (6) make the timing of vegetation success measurements in areas receiving 26 inches or less of annual rainfall consistent with those in areas

receiving more than 26 inches of annual rainfall. The Commission proposes amendments in §12.337 and §12.395 to mirror the changes resulting from OSM's rulemaking.

The proposed amendments to §12.681 add several critical elements found in OSM's counterpart regulation. The word "Informal" is proposed to be added in the title of the rule; other proposed amendments state that a notice of violation or cessation order that requires cessation of mining expires within 30 days after it is served, unless an informal public hearing is held within that time. Proposed new wording in subsections (a) and (b) allows for a waiver of the informal public hearing, and no hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, the Commission proposes to add within the meaning of the term "mining" the processing, cleaning, concentrating, preparing, or loading of the coal where such operations occur at a place other than at a mine site. A notice of violation or cessation order will not expire if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. The section specifies the conduct that constitutes waiver of the public hearing and extension of the time for holding the public hearing. The proposed amendments reflect OSM's current counterpart regulation.

In §12.682, the existing wording simply refers to the requirements of the Act. The Commission proposes amendments to add the word "Formal" to the rule title and to mirror OSM's federal counterpart regulation. The proposed amendments more fully describe the rights for formal review and the time frame for requesting such review.

The penalty amounts in the Commission's current §12.688, relating to Determination of Amount of Penalty, were promulgated in 1979 and adopted in Chapter 12 in 1997. The Commission proposes to increase the administrative penalty assessments on the schedule to reflect the decreased value in the dollar since 1979. The current schedule does not include a minimum base amount to reflect staff time in preparing the notice of violation documents and penalty assessment evaluation. The Commission proposes a base administrative penalty amount of \$500 (zero assessment points) to reflect the staff time required to prepare the notice of violation documents. The \$500 amount is based on an average of 20 hours in staff time at \$25 an hour attributed to this task. This would result in a minimum administrative penalty of \$500 for a violation that had zero points assessed (due to good faith points being awarded). With respect to penalty increments, the current schedule begins with an initial \$20 penalty (for one assessment point), with \$20 assessed for each additional point up to 25 points, and thereafter, \$100 per point up to a maximum penalty of \$5,000. The Commission proposes to increase these increments by a factor of 2.5, which is the approximate consumer price index change since 1979. The amendments would increase the maximum penalty per violation from \$5,000 to \$10,000. The Commission also proposes to delete penalty amounts for assessment points of 59 and more, because the maximum penalty amount, \$10,000, is assessed for 58 points.

The Commission proposes amendments to §12.689(b) to increase the per day civil penalty from \$750 to \$1,025, which is the same amount as the current OSM counterpart regulation. Other proposed amendments correct statutory citations and add language to clarify that the daily penalty will not be assessed for

more than 30 days. The proposed changes mirror the federal counterpart regulations.

In §12.693, the Commission proposes amendments to clarify time frames for requesting a hearing if an assessment conference was previously held. The proposed changes mirror the OSM counterpart regulations.

The Commission proposes to delete §12.816(c)(1). Changes to federal law effective December 20, 2006 (PL 109-432, 2006 HR 6111) deleted the specific phrase "who owned the surface prior to May 2, 1977, and" as a precondition for a waiver of the lien requirement. The Commission proposes to delete §12.816(c)(1) to conform to federal standards concerning exceptions for a waiver of the lien requirement.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments would be in effect, the net fiscal effect on state government will be a net increase in revenue of \$36,040. This estimated increase in revenue was calculated based on the administrative penalty history for the past three years. The average annual number of violations issued for Fiscal Years 2004-2006 was 17, with an annual average administrative penalty assessment of \$18,360. The new proposed penalty point scale would increase the assessment by a factor of 2.5, yielding an average annual assessment of \$45,900 under the proposed amendments. In addition, the proposed administrative penalty assessment scale would begin with a minimum amount of \$500, compared to \$0 in the current rules. The estimated increase in annual revenue is calculated to be \$36,040, of which \$27,500 (\$45,900 minus \$18,360) is attributed to an increase in the assessment point scale and \$8,500 (17 times 500) from the new \$500 minimum base amount assessed for each violation issued. There will be no fiscal impacts on local governments.

Mr. Hodgkiss has determined that during each year of the first five years the proposed amendments would be in effect the economic cost to the mining industry will be \$36,040. This estimated economic cost is associated with the proposed increase in administrative penalties and assumes that the number and types of violations issued in the past three fiscal years will remain the same in the future.

Mr. Hodgkiss has determined that the public benefit resulting from the proposed amendments will be conformity of the Railroad Commission rules and procedures with those of the federal Office of Surface Mining, which makes the standards easier for the public and the industry to understand, and easier for the industry to comply with.

In accordance with Texas Government Code, §2006.002, Mr. Hodgkiss has determined that there will be no adverse economic effects on small businesses or micro-businesses because of the proposed amendments because there are no small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001, holding coal mining permits from the Commission. The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at <http://www.rrc.state.tx.us/rules/commentform.html>; or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us) and should refer

to SMRD Docket No. 1-07. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, at (512) 463-6901. The status of the Commission rulemaking in progress is available at <http://www.rrc.state.tx.us/rules/proposed.html>.

## SUBCHAPTER G. SURFACE COAL MINING RECLAMATION AND OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

### DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

#### 16 TAC §12.147

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

#### §12.147. *Reclamation Plan: Postmining Land Uses.*

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. This description shall explain:

(1) how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

~~[(2) where range or grazing is the proposed postmining use, the detailed management plans to be implemented;]~~

~~(2)~~ [(3)] where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under §12.399 of this title (relating to Postmining Land Use); and

~~(3)~~ [(4)] the consideration which has been given to making all of the proposed surface mining activities consistent with surface-owner plans and applicable state and local land-use plans and programs.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## SUBCHAPTER J. BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

### DIVISION 3. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BOND AND LIABILITY INSURANCE

#### 16 TAC §12.309

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

#### §12.309. *Terms and Conditions of the Bond.*

(a) - (f) (No change.)

(g) Letters of credit. Letters of credit shall be subject to the following conditions:

(1) the letter may only be issued by a bank organized or authorized to do business in the U.S.;

(2) letters of credit must be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Commission if not replaced by another suitable bond or letter of credit at least 30 days before its expiration date; and

(3) (No change.)

(h) - (i) (No change.)

(j) Self-bonding.

(1) Definitions. For the purposes of this subsection only:

(A) - (F) (No change.)

(G) Self-bond--An indemnity agreement in a sum certain executed by a qualified applicant, or by an applicant and its [it's] qualified third-party guarantor, and made payable to the Commission, with or without separate surety.

(H) - (I) (No change.)

(2) - (7) (No change.)

(k) (No change.)

(l) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Commission [eommission] at the time collateral is offered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

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Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS

### DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS--SURFACE MINING ACTIVITIES

#### 16 TAC §12.337, §12.395

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

#### §12.337. *Topsoil: Redistribution.*

(a) After final grading and before the replacement of topsoil, topsoil substitutes, and other materials segregated in accordance with §12.335 of this title (relating to Topsoil: Removal), regraded land shall be scarified or otherwise treated as required by the Commission to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the Commission approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(b) Topsoil material, and topsoil substitutes, and other supplements [materials] shall be redistributed in a manner that:

(1) achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system. Soil thickness may also be varied to the extent that such variations help meet the specific revegetation goals identified in the permit;

(2) prevents excess compaction of the topsoil, topsoil substitutes, and supplements; and

(3) protects the topsoil, topsoil substitutes, and supplements from wind and water erosion before and after it is seeded and planted.

#### §12.395. *Revegetation: Standards for Success.*

(a) Comparison to an established standard. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §12.390 and §12.391 of this title (relating to Revegetation: General Requirements, and to Revegetation: Use of Introduced Species).

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the Commission, described in writing, and made available to the public.

(2) (No change.)

(b) Standard for revegetated success. Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) for areas developed as grazingland or [;] pastureland, [or undeveloped land use;] the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

(2) (No change.)

(3) for areas to be developed for fish and wildlife habitat, recreation, undeveloped land [shelter belts], or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) minimum stocking and planting arrangements shall be specified by the Commission on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or permit-specific basis;

(B) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond

release, at least 80% of the trees and shrubs used to determine such success shall have been in place for 60% of the applicable minimum period of responsibility. The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60% of that period is less than 20% of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding; and

(C) (No change.)

(4) - (5) (No change.)

(c) Extended responsibility period.

(1) - (2) (No change.)

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in subsection (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six [for at least the last two consecutive years] of the responsibility period. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director, Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting[.] specifically necessitated [necessary] by such actions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

TRD-200703036

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 463-8824

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## SUBCHAPTER L. PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

### DIVISION 2. ENFORCEMENT

#### 16 TAC §12.681, §12.682

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

§12.681. *Informal Public Hearing.*

(a) Except as provided in subsections (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire [be reviewed] within 30 days after it is served unless an informal public hearing has been held within that time [at a public hearing]. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing, or at any other location acceptable to the Commission and the person to whom the notice or order was issued. The field office of the Division nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Commission. Expiration of a notice or order shall not affect the Commission's right to assess civil penalties with respect to the period during which the notice or order was in effect for the violations mentioned in the notice or order under §§12.686 - 12.694 of this title (relating to Civil Penalties). No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, mining includes:

(1) [means] extracting coal from the earth or coal waste piles and transporting it within or from the area; and[.]

(2) the processing, cleaning, concentrating, preparing, or loading of the coal where such operations occur at a place other than at a mine site.

(b) A notice of violation or cessation order shall not expire as provided in subsection (a) of this section, [if the condition, practice or violation in question has been abated or] if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection: [.]

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(A) is informed, by written notice served in a manner provided in paragraph (2) of this subsection, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(B) fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (1)(A) of this subsection shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order was issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Commission shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) - (2) (No change.)

(d) (No change.)

(e) The informal public hearing shall be conducted by a representative of the Commission, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Commission shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) - (2) (No change.)

(g) The granting or waiver of the above informal public hearing shall not affect the right of any person to formal review under [§]§134.175 and §134.176 of the Act and §§2001.141 - 2001.147 of the APA (relating to Contested Cases: Final Decisions and Orders; Motions for Rehearing). At such review proceedings, no evidence as to statements made or evidence produced at the informal public hearing pursuant to this section shall be introduced as evidence to impeach a witness.

(h) The person conducting the informal hearing for the Commission shall determine whether or not the mine site should be viewed during the hearing. In making this determination, the only consideration shall be whether viewing the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

*§12.682. Formal Review of Notice of Violation or Cessation Order.*

(a) A person issued a notice of violation or cessation order under §12.677 or §12.678 of this title (relating to Cessation Orders, and Notices of Violation), or a person having an interest which may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing an application for review and request for a hearing pursuant to §§134.168 - 134.172 of the Act and the APA, within 30 days after receiving notice of the action. [Review of the issuance of a notice of violation or cessation order shall be pursuant to the requisites of §§134.168-134.172 of the Act and the APA.]

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or any modification, termination or vacation, of either.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

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Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 475-1295



## DIVISION 3. CIVIL PENALTIES

### 16 TAC §§12.688, 12.689, 12.693

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

*§12.688. Determination of Amount of Penalty.*

The Commission shall determine the amount of any civil penalty by converting the total number of points assigned under §12.687 of this title (relating to Point System for Penalties) to a dollar amount, according to the following schedule:

Figure: 16 TAC §12.688

*§12.689. Assessment of Separate Violations for Each Day.*

(a) (No change.)

(b) In addition to the civil penalty provided for in subsection (a) of this section, whenever [Whenever] a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or subsequently extended pursuant to §12.678 of this title (relating to Notices of Violation), a civil penalty of not less than \$1,025 [\$750] shall be assessed for each day during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) if suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding pursuant to administrative review under §134.171 [§§134.058-134.064] of the Act, after a determination that the person to whom the notice or order was

issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Commission issues a final order with respect to the violation in question; and

(2) if the person to whom the notice or order was issued initiates judicial review proceedings under §12.694 of this title (relating to Final Assessment and Payment of Penalty), [§§134.058-134.064 of the Act] with respect to the violation, in which the obligations to abate are suspended by the court, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(3) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Commission shall take appropriate action pursuant to §§134.179, 134.181, 134.164 or 134.173 of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

#### §12.693. Request for Hearing.

The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if an assessment conference has been held, the reassessed or affirmed penalty to the Commission, to be held in escrow, within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the assessment conference examiners action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under §12.682 of this title (relating to Formal Review of Notice of Violation or Cessation Order).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 475-1295

## SUBCHAPTER R. TEXAS ABANDONED MINE LAND RECLAMATION PROGRAM

### 16 TAC §12.816

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act; and under Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and

that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on July 17, 2007.

#### §12.816. Liens.

(a) - (b) (No change.)

(c) A lien shall not be filed under this section against the property of a person who[:]

{(1) owned the surface before May 2, 1977; and}

{(2)} did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald

Managing Director

Railroad Commission of Texas

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For further information, please call: (512) 475-1295

## CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG) SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

### 16 TAC §13.70

The Railroad Commission of Texas proposes amendments to §13.70, relating to Rules Examination. The Commission proposes the amendments in response to legislative directives that the Commission recover its costs for providing various services. The proposed amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission proposes to increase the fee for a new employee-level examination to \$40 and the fee for a new management-level examination to \$70. The current fees for these examinations are \$20 and \$50, respectively. The fees were last changed in 1999.

Dan Kelly, Director, Alternative Fuels Research & Education Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. At current rates, in fiscal year 2007 the Commission expects to administer a total of 220 management-level examinations and 3,117 employee-level examinations for LP-gas, CNG, and LNG. At the current rates for exam fees, \$50 and \$20, respectively, the examinations would produce revenue of \$73,340. Based on the proposed increase, the



new fees would result in a revenue increase of \$66,740 per year starting in fiscal year 2008. The Commission does not anticipate incurring any additional costs as a result of administering the proposed amendments; the proposed amendments will not change the program itself. The amendments will change the method of finance of the examination program from General Revenue to Appropriated Receipts. Other state agencies will not necessarily incur any additional costs as a result of the proposed amendments, because these agencies' employees who handle LP-gas, CNG, or LNG in the course of their employment are not required to take Railroad Commission rules examinations. However, state agencies that choose to certify these employees will incur an additional cost of \$20 each time one of their employees takes a new examination.

Mr. Kelly has also determined that there may be fiscal implications for local governments whose employees handle LP-gas, CNG, or LNG in the course and scope of their employment. Local governments are not required to have their employees take the Commission rules examinations, but those local governments that elect to require their employees to do so will incur an additional cost of \$20 for each employee who takes a new examination, if the local government covers the cost of the examination for its employee.

Mr. Kelly has also determined that for each year of the first five years the amendments are proposed to be in effect, the public benefit will be improved transparency in the funding of the Commission's LP-gas, CNG, and LNG examination program and assurance that the Commission is adequately funded to protect the health, safety, and welfare of the general public.

Mr. Kelly has determined that there will be some economic cost to small businesses, micro-businesses, and individuals based on the proposed increase in the fees. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business LPG, CNG, or LNG licensees whose employees or managers are required to take new Railroad Commission examinations will be \$20 additional for each examination. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. The costs for any particular business will vary based on their particular situations.

The Commission assumes that there are LP-gas, CNG, and LNG license holders that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapters 113 and 116, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 01920. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under the Texas Natural Resources Code, §116.012, which requires the Commission to adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas to protect the health, safety, and welfare of the general public; and §116.034, which authorizes the Commission to adopt a reasonable fee to cover the cost of any examination required by and sponsored or administered by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross reference to statute: Texas Natural Resources Code, Chapter 116; §§116.012 and 116.034.

Issued in Austin, Texas on July 17, 2007.

*§13.70. Examination Requirements and Renewals.*

(a) Examination general provisions.

(1) No individual may work or be employed in any capacity which requires contact with CNG or CNG systems until that individual has submitted to and successfully completed a Commission examination which measures the competency of that individual to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the regulations for compressed natural gas related to the type of CNG work anticipated. Table 1 of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision.  
Figure: 16 TAC §13.70(a)(1) (No change.)

(A) Individuals wishing to take a management-level rules examination (for company representatives or operations supervisors) shall pay a nonrefundable fee of \$70 [\$50] before taking any such examination.

(B) Individuals wishing to take an employee-level rules examination (for employees other than company representatives or operations supervisors) shall pay a nonrefundable fee of \$40 [\$20] before taking any such examination.

(C) (No change.)

(2) - (5) (No change.)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

TRD-200703030

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 463-8824



## CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

### SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

#### 16 TAC §14.2019

The Railroad Commission of Texas proposes amendments to §14.2019, relating to Certification Requirements. The Commission proposes the amendments in response to legislative directives that the Commission recover its costs for providing various services. The proposed amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission proposes to increase the fee for a new employee-level examination to \$40 and the fee for a new management-level examination to \$70. The current fees for these examinations are \$20 and \$50, respectively. The fees were last changed in 1999.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. At current rates, in fiscal year 2007 the Commission expects to administer a total of 220 management-level examinations and 3,117 employee-level examinations for LP-gas, CNG, and LNG. At the current rates for exam fees, \$50 and \$20, respectively, the examinations would produce revenue of \$73,340. Based on the proposed increase, the new fees would result in a revenue increase of \$66,740 per year starting in fiscal year 2008. The Commission does not anticipate incurring any additional costs as a result of administering the proposed amendments; the proposed amendments will not change the program itself. The amendments will change the method of finance of the examination program from General Revenue to Appropriated Receipts. Other state agencies will not necessarily incur any additional costs as a result of the proposed amendments, because these agencies' employees who handle LP-gas, CNG, or LNG in the course of their employment are not required to take Railroad Commission rules examinations. However, state agencies that choose to certify these employees will incur an additional cost of \$20 each time one of their employees takes a new examination.

Mr. Kelly has also determined that there may be fiscal implications for local governments whose employees handle LP-gas, CNG, or LNG in the course and scope of their employment.

Local governments are not required to have their employees take the Commission rules examinations, but those local governments that elect to require their employees to do so will incur an additional cost of \$20 for each employee who takes a new examination, if the local government covers the cost of the examination for its employee.

Mr. Kelly has also determined that for each year of the first five years the amendments are proposed to be in effect, the public benefit will be improved transparency in the funding of the Commission's LP-gas, CNG, and LNG examination program and assurance that the Commission is adequately funded to protect the health, safety, and welfare of the general public.

Mr. Kelly has determined that there will be some economic cost to small businesses, micro-businesses, and individuals based on the proposed increase in the fees. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business LPG, CNG, or LNG licensees whose employees or managers are required to take new Railroad Commission examinations will be \$20 additional for each examination. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. The costs for any particular business will vary based on their particular situations.

The Commission assumes that there are LP-gas, CNG, and LNG license holders that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapters 113 and 116, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 01920. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under the Texas Natural Resources Code, §116.012, which requires the Commission to adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal

of compressed natural gas or liquefied natural gas to protect the health, safety, and welfare of the general public; and §116.034, which authorizes the Commission to adopt a reasonable fee to cover the cost of any examination required by and sponsored or administered by the Commission.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross reference to statute: Texas Natural Resources Code, Chapter 116; §116.012 and §116.034.

*§14.2019. Certification Requirements.*

(a) - (b) (No change.)

(c) The applicant shall pay to AFRED a \$70 [\$50] examination fee for each management-level examination and a \$40 [\$20] fee for each employee-level examination in advance of each required examination. Examination fees are nonrefundable. An applicant who fails an examination shall pay the full examination fee for each subsequent examination.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2007.

TRD-200703031

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 475-1295



## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new §25.455, relating to One-Time Bill Payment Assistance Program, and amendment to §25.497, relating to Critical Care Customers. Conforming amendments to §25.451, relating to Administration of the System Benefit Fund, §25.454, relating to Rate Reduction Program, and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives, will be considered during a subsequent rulemaking relating to the low-income discount calculation. The proposed new rule and amendment will define a one-time bill payment assistance program for an eligible residential customer who has been threatened with disconnection of electric service and who is or has in his or her household a low-income person who is seriously ill or disabled and whose health or safety may be injured by the disconnection. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 33811 is assigned to this proceeding.

Jonathan Griffin, Retail Market Analyst, Electric Industry Oversight Division, has determined that for each year of the first five

years the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Griffin has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be to implement PURA §39.903(e)(1)(B), and thereby assist low-income persons in need of electric service for certain medical reasons with the payment of their household's electric bills. While the program would be funded by the system benefit fund, there may be economic costs to retail electric providers who are required to comply with the new section and amendment. Specifically, retail electric providers would be required to communicate with the low-income discount administrator regularly, and would be required to continue to serve customers who apply for this assistance. These costs are likely to vary from business to business, and are difficult to ascertain. However, these costs are necessary to implement PURA §39.903(e)(1)(B).

The bill payment assistance program provided by PURA §39.903(e)(1)(B) requires that funds be appropriated from the system benefit fund by the Legislature. Funds were not appropriated for this purpose for the 2008-09 biennium, and so the bill payment assistance program will not immediately be available to customers. The commission is conducting this rulemaking proceeding so that the program may be implemented in the future should funds be appropriated.

Mr. Griffin has determined that for each year of the first five years the proposed section is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested, under the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, September 25, 2007, at 2:00 p.m. in the Commissioners' Hearing Room. The request for a public hearing must be received by Monday, September 10, 2007.

Comments on the proposed new section and amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be received by Monday, September 10, 2007. Reply comments may be submitted, and must be received by Tuesday, September 25, 2007. Comments and reply comments should be organized in a manner consistent with the organization of the proposed rule(s). Sixteen copies of comments and reply comments must be filed. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33811. In addition to the proposed language, the commission requests that the parties submit comments on the following questions:

1. *One method by which the low-income discount administrator (LIDA) could notify retail electric providers (REPs) of applications for one-time bill payment assistance would be for the LIDA to post to a file transfer protocol (FTP) site lists of customers applying for assistance. REPs would then review the FTP site on a daily basis. Are there alternative methods by which the LIDA*

could notify REPs of applications for one-time bill payment assistance, to ensure that customers are not disconnected during the application process?

2. How many customers do you expect would obtain assistance through this one-time bill payment assistance program each year? What do you expect the average assistance amount would be per customer, keeping in mind the limits provided by new P.U.C. Substantive Rule §25.455(d)(2)?

## SUBCHAPTER Q. SYSTEM BENEFIT FUND

### 16 TAC §25.455

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §39.903(j-1), which requires the commission to adopt rules governing the one-time bill payment assistance program provided by §39.903(e)(1)(B).

Cross Reference to Statutes: PURA §14.002 and §39.903.

#### §25.455. One-Time Bill Payment Assistance Program.

(a) Purpose. The purpose of this section is to define and implement a one-time bill payment assistance program for an eligible customer who has been threatened with disconnection of electric service and who is or has in his or her household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection.

(b) Application. This section applies to retail electric providers (REPs) that provide electric service in an area that has customer choice, or an area for which the commission has issued an order applying the system benefit fund or one-time bill payment assistance. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).

(c) Funding. The one-time bill payment assistance requirements set forth by this section are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the program and fund assistance for customers, the commission may reduce the level of the assistance payments prescribed in subsection (d)(2) of this section. Alternatively, the commission may take the following actions:

(1) Suspend the requirements of subsections (d) - (f), with the exception of subsection (d)(3), of this section until sufficient funding and spending authority are available.

(2) Suspend the requirements of the following provisions of this title, insofar as they relate to the one-time bill payment assistance program, until sufficient funding and spending authority are available:

(A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);

(B) §25.457(i) of this title; and

(C) §25.43(d)(3)(D) of this title (relating to Provider of Last Resort).

(d) One-time bill payment assistance program. Bill payment assistance under this section shall be available to an eligible customer

one time per calendar year. REPs shall make this bill payment assistance program available to eligible customers, shall inform customers of its availability, pursuant to §25.483(k) and (l) of this title (relating to Disconnection of Service) and §25.480(g) of this title (relating to Bill Payment and Adjustments), and shall provide credits to customers, consistent with subsection (g)(1)(B) of this section. All REPs shall direct customers who may be eligible for this program to contact the Low-Income Discount Administrator (LIDA) for the purpose of determining eligibility.

(1) A customer shall be eligible for assistance through the one-time bill payment assistance program if the customer submits to LIDA a one-time bill payment assistance self-enrollment application on a form approved by the commission, and meets all of the following criteria:

(A) The customer is a residential electric customer and has received a notice from the customer's REP that electric service will be disconnected for nonpayment;

(B) The customer is or has in the customer's household a seriously ill or disabled person whose health or safety may be injured by the disconnection of electric service, as demonstrated pursuant to subsection (e) of this section. If the seriously ill or disabled person is not the customer, the customer shall attest that the seriously ill or disabled person resides in the household;

(C) The seriously ill or disabled person in the household meets the low-income parameters in the definition of low-income customer in §25.5 of this title (relating to Definitions), as demonstrated through the self-enrollment application and a determination by LIDA pursuant to subsection (f) of this section; and

(D) The customer has not already received assistance under this section during the current calendar year.

(2) The amount of assistance a customer may receive under this section in a single instance of assistance shall not exceed the lesser of \$1,000 or the outstanding balance from the last three monthly bills for electric service. The commission may periodically adjust this limit.

(3) A customer may receive assistance under this section one time per calendar year, regardless of how many seriously ill or disabled low-income persons reside in the household. LIDA shall maintain a record of all electric customers who have received assistance under this section in the current calendar year. LIDA shall not approve assistance for electric customers who have already received assistance under this section in the current calendar year. For the purpose of determining whether a customer has already received assistance in the current calendar year, the date the customer contacted LIDA to request assistance under this section shall be considered the date of assistance.

(4) A seriously ill or disabled low-income person may be the subject of only one application for this one-time bill payment assistance program in any one calendar year. LIDA and the commission may audit applications for this program, and the commission may limit or prohibit further assistance under this section to any person found to have violated this section or to have provided a false statement to obtain assistance under this section.

(e) Establishment of seriously ill or disabled status.

(1) To establish that a household member is seriously ill or disabled and that the person's health or safety may be injured by the disconnection of electric service, the customer shall, in a timely manner, submit an application using the commission-approved self-enrollment form to LIDA, including a statement from the seriously ill or disabled person's attending physician indicating how the disconnection of service could cause injury to the health or safety of the seriously ill or

disabled person residing at that residence. For purposes of this section, "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(2) If the form has been properly completed by the physician, LIDA shall accept the physician's statement, and need not make further inquiry in order to make a determination of the customer's eligibility.

(f) Establishment of low-income status.

(1) If the seriously ill or disabled person is the customer, the low-income requirement of subsection (d)(1)(C) of this section shall be satisfied in either of the following ways:

(A) If the customer is enrolled in the rate reduction program described in §25.454 of this title (relating to Rate Reduction Program), the customer may indicate on the self-enrollment application that he or she is enrolled in the rate reduction program, and LIDA verifies that the assertion is correct; or

(B) If the customer is not enrolled in the rate reduction program, the customer may complete the income and assistance eligibility portion of the self-enrollment application, attesting to and providing proof of level of household income or of enrollment in an applicable Texas Health and Human Services Commission (HHSC) program, and LIDA determines that the customer qualifies as a low-income customer under §25.454 of this title.

(2) If the seriously ill or disabled person is a household member other than the customer, the low-income requirement of subsection (d)(1)(C) of this section shall be satisfied if the customer or the seriously ill or disabled person completes the income and assistance eligibility portion of the self-enrollment application, attesting to and providing proof of level of household income or of the seriously ill or disabled person's enrollment in an applicable HHSC program, and LIDA determines that the seriously ill or disabled person qualifies as a low-income person.

(3) LIDA shall determine whether the seriously ill or disabled person is low-income by reviewing the completed income and assistance eligibility portion of the self-enrollment application. A seriously ill or disabled person who is not enrolled in the rate reduction program shall submit with the self-enrollment application proof of enrollment in an applicable HHSC program, or proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information, consistent with §25.454 of this title. LIDA shall audit statistically valid samples of such enrollment forms for accuracy.

(g) Protection against disconnection for nonpayment.

(1) To prevent disconnection during the application process, the customer must contact LIDA at least one business day before the stated date of disconnection and inform LIDA that disconnection of service may injure the health or safety of a seriously ill or disabled low-income person residing at that residence, and that the customer is applying for assistance under this section. LIDA shall notify the appropriate REP of any such notification received from the customer as soon as possible, but not later than the next business day.

(A) A REP that has received notification from LIDA that a customer is applying for assistance under this section shall not authorize disconnection of the customer's service for non-payment until it has been determined whether the customer meets the eligibility requirements of this section, and shall cancel any pending transactions authorizing the disconnection of the customer for non-payment. A REP shall issue a cancellation of disconnection as soon as possible, but not later than the business day following the date it was notified that a cus-

tomers is applying for assistance under this section. A REP shall request as soon as possible that a customer who has been disconnected be reconnected, at the REP's expense, if the customer contacted LIDA and began the process of applying for assistance under this section at least one business day before the stated date of disconnection, as required by paragraph (1) of this subsection.

(B) If the customer is ultimately deemed to be eligible for assistance under this section, and the customer has not yet received assistance in the current calendar year, then the REP shall provide the customer a credit in the full amount of the customer's outstanding balance, up to the limit described in subsection (d)(2) of this section. If the REP or LIDA is aware at the time of the request that the customer has received this assistance in the current calendar year, the REP or LIDA shall inform the customer that he or she is not eligible to receive the bill payment assistance again in the current calendar year, and this paragraph shall not apply.

(2) A customer who receives assistance under this section, but for whom the assistance does not completely satisfy the customer's outstanding balance for electric service, shall be considered to have satisfied the requirements of §25.483(g)(1)(A) and (B) of this title, and shall be afforded the protection of that subsection, if the customer requests to enter into a deferred payment plan for the outstanding balance owed to the REP. If so, the requirements set forth in §25.480(j)(5) of this title shall apply.

(h) Responsibilities. In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) LIDA shall administer the process of self-enrollment for the purpose of determining eligibility for the one-time bill payment assistance program. LIDA's responsibilities include:

(A) Distributing and processing self-enrollment applications, as developed by the commission, for the purpose of applying for one-time bill payment assistance;

(B) Maintaining records for all applicants;

(C) Notifying the REP when a customer indicates that the customer will be applying for assistance under this section;

(D) Determining in a timely manner whether the customer is eligible for assistance in accordance with subsections (d) - (f) of this section. If, in the course of determining eligibility for one-time bill payment assistance, LIDA determines the customer is eligible for the rate reduction program under §25.454 of this title, LIDA shall also treat the application for one-time bill payment assistance as a self-enrollment application for the rate reduction program; and

(E) Notifying the REP by email and the customer in writing whether the customer qualifies for assistance under this section. If the customer is notified that he or she is not eligible for assistance, the notification shall indicate the reason for this determination, and shall inform the customer of the appeals process available under subsection (i) of this section.

(2) The REP's responsibilities shall include:

(A) Directing the customer to contact LIDA directly to apply for assistance under this section, and providing the customer with LIDA's contact information;

(B) Postponing disconnection activity upon notification of a customer's application for assistance pursuant to subsection (g)(1)(A) of this section;

(C) Communicating with LIDA to ascertain the eligibility status of each customer who has requested one-time bill payment assistance;

(D) Assisting LIDA in working to resolve issues concerning eligibility. This obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general assistance processes and information, and assigning problem resolution staff to work with LIDA on problems that LIDA does not have sufficient information to resolve. This obligation also requires the REP to provide customer information to LIDA upon request. Customer information includes, for each applicant for assistance, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;

(E) Applying the appropriate credit for assistance to an eligible customer's account;

(F) Providing to the commission copies of materials regarding assistance provided to customers during the previous 12 months upon commission request; and

(G) Fulfilling reporting requirements as required by §25.451 of this title.

(i) Appeals process. In instances in which the REP receives from LIDA a notice that the customer is ineligible for assistance under this section for reasons other than the customer has already received assistance in the current calendar year, the REP shall not submit authorization for disconnection of the customer until the fifth business day after learning of the customer's ineligibility, in order to afford the customer time to receive notice of ineligibility and to appeal that determination if the customer so desires. In such circumstances, if the customer believes the self-enrollment application has been erroneously denied, the customer may appeal the eligibility determination as follows:

(1) The customer may request that LIDA review its denial of the application, and the customer may submit additional proof of eligibility. If, prior to the REP's submission of authorization for disconnection, the customer requests a review from LIDA and the REP receives notification from the customer of the request, the REP may not authorize disconnection of the customer until after the completion of LIDA's review of the application. If upon review, LIDA affirms that the customer is ineligible for assistance, the REP shall not submit authorization for disconnection of the customer until the fifth business day after receiving notice of LIDA's affirmation of ineligibility, in order to afford the customer time to receive notice of LIDA's affirmation of ineligibility and to appeal that affirmation if the customer so desires, pursuant to paragraph (2) of this subsection.

(2) The customer may request in writing an informal review by commission staff to determine eligibility. If, prior to the REP's submission of authorization for disconnection, the customer requests an informal review by commission staff and the REP receives notification from the customer of the request, the REP may not authorize disconnection of the customer until after the informal review is completed. If commission staff affirms that the customer is ineligible for assistance, the REP may authorize disconnection of the customer after proper notice and not before the first day after the disconnection date in the notice. The REP may issue this notice any time after the REP receives notification of commission staff's determination, and shall adhere to the requirements of §25.483(k) and (l) of this title.

(3) A customer who is dissatisfied with the commission staff's determination pursuant to paragraph (2) of this subsection may

file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(4) A customer who appeals more than one rejected application for assistance in a given calendar year shall not have the protections from disconnection provided by paragraphs (1) and (2) of this subsection available to him or her, and the REP shall not be required to issue a new disconnection notice pursuant to paragraph (2) of this subsection, for any appeal other than the first appeal of the calendar year. For the purpose of determining whether a customer has already appealed a decision in a calendar year, the date the customer contacted LIDA to request assistance pursuant to subsection (d) of this section shall be considered the date of appeal, even if the actual appeal was submitted in a subsequent calendar year. Any reconnection costs associated with such additional appeals shall be borne by the customer.

(j) Confidentiality of information.

(1) Any data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.

(2) All data transfers pursuant to this section from REPs to LIDA shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information.

(3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

### 16 TAC §25.497

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §39.903(j-1), which requires the commission to adopt rules governing the one-time bill payment assistance program provided by §39.903(e)(1)(B).

Cross Reference to Statutes: PURA §14.002 and §39.903.

§25.497. *Critical Care Customers.*

(a) - (b) (No change.)

(c) Effect of critical care status on payment obligations. Qualification under this section does not relieve the customer of the obligation to pay the REP or the TDU for services rendered. However, a critical care residential customer may qualify for deferral of disconnection by following the procedures set forth in §25.483(g) [(h)] of this title (relating to Disconnection of Service) or Section 5.3.7.4(1)(D) [(3)] of the TDU's tariff for retail electric delivery service, or may contact the

REP regarding other forms of payment assistance, such as the one-time bill payment assistance program provided by §25.455 of this title (relating to One-Time Bill Payment Assistance Program).

{(d) This section is effective June 1, 2004.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rules Coordinator

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## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes the amendments of §26.54, relating to Service Objectives and Performance Benchmarks, §26.71, relating to General Procedures, Requirements, and Penalties, §26.121, relating to Privacy Issues, §26.130 relating to Selection of Telecommunications Utilities, and §26.141, relating to Distance Learning, Information Sharing Programs and Interactive Multimedia Communications pursuant to its conclusions in Project Number 33043, *Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers Pursuant to Texas Government Code*. Project Number 33952 has been assigned to this proceeding.

In Project Number 33043 the commission determined that §26.54(b) contained obsolete language.

As discussed in Project Number 33043, the recent conclusion of Project Number 33401, *Rulemaking to Amend and/or Repeal Commission Rules Related to the Filing of Financial Reports as Recommended in Project Number 32460* requires the amendment of §26.71(f), and §26.141(h) to eliminate outdated reporting requirement cross references.

The commission also concluded in Project Number 33043 that §26.121 and §26.141 require amendments to remove Chapter 23 citations and replace, where appropriate, with Chapter 26 citations.

Finally, the commission determined in Project Number 33043 that §26.130(g)(3) must be amended to advise customers to contact their authorized carrier in case of slamming, not the unauthorized carrier as it now appears. This error in language occurred during revisions adopted in Project Number 28324, *P.U.C. Rulemaking Proceeding to Amend P.U.C. Substantive Rules §26.32 and §26.130*.

Ms. Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, has determined that for each year of the first five-year period the proposed amended sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Ervin has determined that for each year of the first five years the proposed amended sections are in effect the public benefit anticipated as a result of enforcing these sections will be the correction of errors and the correction and clarification of cross references and elimination of obsolete language and this will result in greater efficiency and cost savings for the telecommunications providers and the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Ervin has also determined that for each year of the first five years the proposed amended sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Texas Government Code §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, September 24, 2007 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication of this proposal.

Comments on the proposed sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to repeal and adopt the proposed sections. All comments should refer to Project Number 33952 and should be organized in sequence by the applicable sections and sub-sections.

## SUBCHAPTER C. QUALITY OF SERVICE

### 16 TAC §26.54

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

§26.54. *Service Objectives and Performance Benchmarks.*

(a) (No change.)

(b) One-party line service and voice band data.

(1) - (2) (No change.)

(3) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T

V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent) [, by the end of 2002. This upgrade will be made at no charge to the individual customer].

[(4) Within 180 days of the effective date of this section, a DCTU may request a waiver from the requirements of paragraph (3) of this subsection. The waiver request may be granted only if the commission determines that all of the following requirements have been met.]

[(A) The cost to the DCTU of implementing the provisions of paragraph (3) of this subsection exceeds the public benefit.]

[(B) The DCTU has submitted by June 30, 2000, a reasonable implementation plan stating for each exchange when all switched voice circuits within that exchange shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).]

[(C) The DCTU has submitted proposed tariff sheets which provide that:

[(i) upon request by a customer, the DCTU will upgrade the customer's switched voice circuits to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent);]

[(ii) the upgrade will be made at no charge to the individual customer; and]

[(iii) the upgrade request will be completed within the time period allowed for a service order for regular service installation pursuant to subsection (c)(1)(B) of this section.]

[(D) The DCTU has agreed to provide an on-going customer education program, acceptable to the commission, which assures that the DCTU's customers are aware of the availability of the service quality upgrade.]

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Rules Coordinator

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## SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

### 16 TAC §26.71

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's

ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

§26.71. *General Procedures, Requirements and Penalties.*

(a) - (e) (No change.)

(f) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.

(1) - (3) (No change.)

[(4) Shareholder annual reports: seven days from the date of mailing the same to shareholders.]

[(5) Securities and Exchange Commission Filings: 15 days from the initial filing date with the Securities and Exchange Commission.]

(6) [(6)] Special or additional reports: as may be prescribed by the commission.

(7) [(7)] Annual reports required by §26.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.

[(8) Annual reports required by §26.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.]

(9) [(9)] Periodic Certificate of Operating Authority report: Due as set forth in the commission order granting the certificate.

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

### 16 TAC §26.121, §26.130

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's ability to act upon those conclusions that do not require statutory review.



Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

*§26.121. Privacy Issues.*

(a) - (b) (No change.)

(c) Lost privacy. Any dominant certificated telecommunications utility proposing to offer a new service or a new feature to an existing service under the provisions of §26.207[§23.24] of this title (relating to Form and Filing of Tariffs), §26.209[§23.26] of this title (relating to New and Experimental Services), §26.210[§23.28] of this title (relating to Promotional Rates for Local Exchange Company[LEEC] Services), §26.211[§23.27] of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), or §26.227[§23.25] of this title (relating to Procedures Applicable to Non-basic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Companies[~~Electing Incumbent Local Exchange Carriers~~]) for which the commission finds diminished customer privacy, and for which the dominant certificated telecommunications utility has not shown good cause pursuant to subsections (d)(2)(B)(ii) and (d)(2)(D) of this section, must, in a manner ordered by the commission:

(1) provide a means of restoring the lost privacy at no charge to customers; and

(2) educate all customers as to the means to regain the lost privacy.

(d) New services or features. For all dominant certificated telecommunications utility applications filed pursuant to §26.207[§23.24] of this title, §26.209[§23.25] of this title, §26.210[§23.26] of this title, §26.211[§23.27] of this title, or §26.227[§23.28] of this title, the dominant certificated telecommunications utility must identify all privacy issues, as that term is defined in §26.5 of this title, that result from the implementation of the new service or feature, and all privacy issues that could diminish customers' privacy.

(1) - (2) (No change.)

(3) Staff review. Staff shall review all applications submitted by a dominant carrier under the provisions of §26.207[§23.24] of this title, §26.209[§23.25] of this title, §26.210[§23.26] of this title, §26.211[§23.27] of this title, or §26.227[§23.28] of this title for privacy issues and privacy issues resulting in a lost degree of privacy.

(e) (No change.)

*§26.130. Selection of Telecommunications Utilities.*

(a) - (f) (No change.)

(g) Notice of customer rights.

(1) - (2) (No change.)

(3) Customer notice. The notice shall state:

Figure: 16 TAC 26.130(g)(3)

(4) - (5) (No change.)

(h) - (l) (No change.)

(m) Additional requirements for changes involving certain telecommunications utilities.

(1) - (6) (No change.)

~~[(7) Compliance with this subsection is required by January 1, 2003.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER G. ADVANCED SERVICES

### 16 TAC §26.141

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, pursuant to the general requirements of SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005) regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13, 79th Legislature, Regular Session (Tex. 2005).

*§26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications.*

(a) (No change.)

(b) Telecommunications services eligible for reduced rates.

(1) (No change.)

(2) A service is used predominantly for distance learning purposes by an educational institution or information sharing program purposes by a library when over 50% of the traffic carried, whether in video, data, voice, and/or electronic information, is identified for such use pursuant to the requirements of subsection (d)[~~(4)~~] of this section.

(c) (No change.)

(d) Process by which an educational institution or library qualifies for reduced rates other than through a customer-specific contract. To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.

~~[(1) Affidavit. To qualify for a discounted rate, an educational institution or library, as defined in subsection (a) of this section, must provide a sworn affidavit to the dominant certificated telecommunications utility account representative or, if no account representative is assigned, to the business office of the utility.]~~

(1) [(A)]The affidavit shall:

(A) [(i)] specify the requested service(s) to be discounted;

(B) [(ii)] quantify, if applicable, the requested service(s) to be discounted;

(C) [(iii)] state that the discounted service(s) will be used predominantly for distance learning purposes or information sharing program purposes; and

(D) [(iv)] specify the intended use(s) of the discounted service(s).

(2) [(B)] The affidavit shall be signed by the administrative head of the institution (e.g., principal, president, chancellor) or library, or a designee given the task and authority to execute the affidavit on behalf of the educational institution or library requesting the discounted rates.

(3) [(C)] No other special form needs to be provided as part of the application process.

(4) [(D)] The educational institution or library shall provide an affidavit each time it orders services that will be used predominantly for distance learning purposes or information sharing program purposes.

[(2) Tariff filing. Within 30 days after the most recent effective date of this section, each dominant certificated telecommunications utility as of September 1, 1995 shall file a distance learning and information sharing program tariff, providing for a 25% discount on any service used predominantly for distance learning or information sharing program purposes, other than a service offered pursuant to a customer-specific contract. The tariff filing shall concern only the implementation of this section and not affect any of the utility's other rates or services not utilized for distance learning or information sharing program purposes. Once the tariff goes into effect, any educational institution or library subsequently filing an affidavit, as described in paragraph (4) of this subsection, shall be eligible to receive the requested service at the discounted rate.]

(e) (No change.)

(f) Customer-specific contracts. When a service is provided to an educational institution or library pursuant to §23.211[(§23.27(e))] of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), the dominant certificated telecommunications utility shall price those components of the service used predominantly for distance learning or an information sharing program no less than 105%, and no greater than 110%, of the customer-specific long-run incremental cost.

(g) (No change.)

[(h) Filing requirements. Each dominant certificated telecommunications utility shall file an annual report with the commission on September 1 of each year indicating the demand for distance learning or information sharing program services provided under the distance learning or information sharing program tariff. The report shall include the following:]

[(1) the type of institution(s) or libraries provided service(s);]

[(2) type(s) of service(s) provided to each institution or libraries; and]

[(3) quantity of the service(s) provided.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 936-7223

## TITLE 22. EXAMINING BOARDS

### PART 11. BOARD OF NURSE EXAMINERS

#### CHAPTER 211. GENERAL PROVISIONS

##### 22 TAC §211.6, §211.7

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §211.6 and §211.7, pertaining to General Provisions. Section 211.6 and §211.7 specifically address Committees of the Board, and Executive Director, respectively. House Bill 2426 (Sunset Bill) amended the Nursing Practice Act by adding §301.1595 to the Texas Occupations Code. The proposed amendments to §211.6 are for the purpose of implementing §301.1595 of the Texas Occupations Code as applicable to the committees' make-up. The purpose of each committee is explicitly stated in the name of the committee. The composition of the committees is based on representation by statewide stakeholder organizations and not the individuals themselves; therefore, a member's experience, area of residence, or term of service is not specified. The board entrusts each stakeholder group to send its own representative to the committee meeting, so the appointment procedure for individual members is not determined by the board. The membership of each committee is comprised of member organizations for the purpose of receiving public input and to utilize negotiated rulemaking.

Section 211.6 was amended in March 2007 to comply with the Sunset Advisory Committee staff's recommendations which were subsequently incorporated into House Bill 2426 (HB 2426). Subsection (f)(4) is recommended to incorporate consistency in the rule by designating the presiding officer as the chairperson. Subsection (f)(11) is recommended for amendment to place the chairperson in the position of scheduling meetings that are convenient to a majority of the committee members in order to ensure a quorum is present to conduct business.

In addition, HB 2426 (Sunset Bill) amends the Nursing Practice Act by adding two provisions to Texas Occupations Code §301.204 (General Rules, Policies, and Procedures Regarding Complaint Investigation and Disposition). New requirements were added to subsections (a) and (f).

Section 211.7 is amended to designate that the Executive Director is the appropriate employee of the board to dismiss a complaint in compliance with this statute and to report this information to the Board.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the Board will more effectively accomplish its

mission. There will be no cost to small businesses or affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by e-mail to joy.sparks@bne.state.tx.us; or by facsimile to (512) 305-8101.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §301.1595 and §301.204 will be affected by the implementation of these amendments.

*§211.6. Committees of the Board.*

(a) - (e) (No change.)

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) - (3) (No change.)

(4) Each committee shall select from among its members a chairperson [~~presiding officer~~] who shall report to the agency or Board as needed.

(5) - (10) (No change.)

(11) The committees will meet as needed. Meeting times will be scheduled by the chairperson of each committee who shall determine whether a majority of the members will be in attendance to establish a quorum. [The committees will meet on a schedule established by the chair of each committee.]

(12) (No change.)

*§211.7. Executive Director.*

(a) - (b) (No change.)

(c) The executive director shall have the authority to dismiss a complaint if an investigation demonstrates that a violation did not occur, or the subject of the complaint is outside the board's jurisdiction. At each public meeting of the board, the executive director shall report to the board each complaint dismissed since the board's last public meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703089

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-6823



## CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

### 22 TAC §§217.2, 217.4, 217.5, 217.11, 217.13

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §217.2 (Licensure by Examinations

for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), §217.5 (Temporary License and Endorsement), §217.11 (Standards of Nursing Practice), and §217.13 (Peer Assistance Programs) pertaining to Licensure, Peer Assistance and Practice. These amendments are being proposed pursuant to bills passed in the 80th Legislative Session and the Board's Sunset Review.

House Bill 2426 amended the Nursing Practice Act to include the requirement that on or after September 1, 2008, an applicant for a Texas nursing license must pass "the jurisprudence exam approved by the board...." The board is in the early stages of implementing this requirement, but the amendment to §§217.2, 217.4, and 217.5 incorporates this requirement.

In addition, the Sunset Committee recommended that the Board remove the requirement that applications for licensure filed with the Board be notarized. This recommendation is made, in part, to provide consistency in the application process, because applicants who use the on-line process are not required to utilize the notarized statement.

Senate Bill 993 amends the Nursing Practice Act by addressing the areas of nursing peer review and various aspects of the regulation of nursing practice, therefore §301.401 (formerly entitled Grounds for Reporting Nurse) was partly modified.

This section also provides a statutory definition for "minor incident" as follows: "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person.

In addition, House Bill 2426 amended the Nursing Practice Act, §301.410, entitled Report Regarding Impairment by Chemical Dependency, Mental Illness, or Diminished Mental Capacity, to include the following provision: ...A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

To implement these changes to the Nursing Practice Act into Board rule, §217.11(1)(K) addressing mandatory reporting is recommended for amendment to track the language of the statutes and the Board's name is updated to reflect its new name beginning September 1, 2007, the Texas Board of Nursing (BON).

House Bill 2426 amended the Nursing Practice Act, §301.410, entitled Report Regarding Impairment by Chemical Dependency, Mental Illness, or Diminished Mental Capacity, to include the following provision: ...A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

To address the board's responsibility when an impaired nurse with an alleged practice violation is reported to the board, §301.4105 was added to the Nursing Practice Act and states that the board's responsibility following such a report is to determine "whether a nurse violated this chapter or a rule adopted under this chapter for any case reported to the board in which the nurse's ability to perform the practice of nursing was impaired or suspected of being impaired by chemical de-

pendency or diminished mental capacity and in which the nurse is suspected of committing a practice violation. The board, in deciding whether to take disciplinary action against the nurse for a violation of this chapter or board rules, shall balance the need to protect the public and the need to ensure the impaired nurse seeks treatment."

In addition, §301.4106 (Peer Assistance Programs) was added requiring the board by rule to develop guidelines to:

(1) outline the roles and responsibilities of the board and a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;

(2) outline the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing;

(3) establish requirements for successfully completing a peer assistance program and for notification of the board of the successful completion by a nurse the board has ordered to attend or referred to the program; and

(4) establish a procedure for evaluating the success of a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code.

To implement these changes to the Nursing Practice Act into Board rule, §217.13 is proposed for amendment to comply with all of these standards, to include the requirement regarding an impaired nurse who has allegedly committed a practice violation also, and the board's duty to weigh the need to protect the public against the need to encourage impaired nurses to seek treatment.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Katherine Thomas, executive director, has determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the Board will more effectively accomplish its mission. There will be no cost to small businesses or affected individuals as a result of these proposed amendments except for the prospective cost of the jurisprudence exam.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to joy.sparks@bne.state.tx.us; or by facsimile to (512) 305-8101.

The proposed amendments of this chapter are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §§301.401, 301.410, 301.4105, and 301.4106 will be affected by the implementation of these rules.

*§217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.*

(a) All applicants for initial licensure by examination shall:

(1) file a complete application containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, [a ~~notarized affidavit~~], and the required application processing fee which is not refundable;

(2) - (4) (No change.)

(5) submit FBI fingerprint cards provided by the Board for a complete criminal background check; and

(6) pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) - (f) (No change.)

*§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.*

(a) Nurse applicants for initial licensure applying under this section.

(1) - (2) (No change.)

(3) all applicants must file a complete[; ~~notarized~~] application for registration containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable;

(4) all applicants must pass the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants) as a Texas applicant;

(A) (No change.)

(B) within four years of the date of eligibility for the NCLEX-PN or NCLEX-RN if the applicant has practiced as a second-level or first-level general nurse at least two years since completing the requirements for graduation; ~~and~~

(5) all nurse applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check; and[-]

(6) all nurse applicants must pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) - (e) (No change.)

*§217.5. Temporary License and Endorsement.*

(a) The requirements to obtain a non-renewable temporary license which is valid for 120 days, or a permanent license for endorsement are as follows:

(1) - (4) (No change.)

(5) Filing a completed [~~notarized~~] "Application for Temporary License/Endorsement" containing:

(A) (No change.)

(B) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure and attestation that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading;

(C) a recent, fade-proof passport sized identification photograph, properly identified;

(6) the required application processing licensure fee, which is not refundable; and

(7) applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check; and[-]

(8) a passing score on the jurisprudence exam approved by the board, effective September 1, 2008.

(b) - (f) (No change.)

§217.11. *Standards of Nursing Practice.*

The Texas Board of Nursing[Nurse Examiners] is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:

(A) - (J) (No change.)

(K) Comply with mandatory reporting requirements of Texas Occupations Code ch. 301, Subchapter I, which include reporting a nurse:

(i) who violates this chapter or a board rule and contributed to the death or serious injury of a patient;

(ii) whose conduct causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(iii) whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or

(iv) whose actions indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

~~[(i) unnecessary or likely exposure by the nurse of a client or other person to a risk of harm;]~~

~~[(ii) unprofessional conduct by a nurse;]~~

~~[(iii) failure by a nurse to adequately care for a client;]~~

~~[(iv) failure by a nurse to conform to the minimum standards of acceptable nursing practice;]~~

~~[(v) impairment or likely impairment of a nurse's practice by chemical dependency; or ]~~

~~(v) [(vi) ]except [exclusions] for minor incidents (Tex. Occ. Code §301.401(2), §301.419, 22 TAC §217.16), peer review (Tex. Occ. Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance if no practice violation (Tex. Occ. Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC ch. 217).~~

(L) - (V) (No change.)

(2) - (4) (No change.)

§217.13. *Peer Assistance Programs.*

A peer assistance program for nurses will identify, assist, and monitor professional colleagues experiencing mental health, alcohol, or drug problems that are or are likely to be job-impairing so that they may return to practice safe nursing.

(1) Additional criteria.

(A) - (E) (No change.)

(F) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to

the board. Reports of noncompliance shall include information regarding nurses who have been reported in accordance with the requirements of Texas Occupations Code §301.410. The program shall report to the board a nurse reported to the program for chemical dependency, mental illness, or diminished mental capacity if the nurse also committed a practice violation, in order for the board to balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

(G) - (I) (No change.)

(J) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(K) - (M) (No change.)

(2) (No change.)

(3) The program shall contact the board if a nurse under contract fails to comply with the terms of the contract and evidences conduct that indicates an inability or unwillingness to comply with the program.

(4) The program shall notify the board when a nurse who the board has ordered to attend or referred to the program successfully completes the peer assistance contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703093

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-6823



## CHAPTER 223. FEES

### 22 TAC §223.1

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §223.1 regarding Fees. The proposed amendment recommends several modifications to fees due mainly to two factors. These factors are the Board's funding requirements in the Appropriations bill and designated fees that the Board collected for programs designated by statute but not being fully provided to those programs. (The excess fees were going into the State's general revenue fund.)

The fees are being increased in accordance with House Bill 1, the General Appropriations Act 2008-2009, 80th Legislature, Regular Session, in particular, page 43 of Article VIII. For legislative budgetary requirements, the board must raise \$823,100 each fiscal year in appropriated receipts for 2008 and 2009 to fund workshops and the newsletter. Additionally the \$150,000 increase in appropriated receipts will cover increases to the costs of the agency newsletter including postage, paper and labor. The board must also raise an additional \$72,000 in 2008 and \$144,000 in 2009 to cover the across-the-board 2% pay raise given to each state employee by the Legislature. Finally, the Board was given authority via a regulatory response rider to hire three new employees at an additional cost of \$142,837 each year.

A reduction in fees is recommended due to the Board collecting more fees for certain programs than is being appropriated to those programs. Two of those programs are the Texas Peer Assistance Program for Nurses (TPAPN) program and the nursing work force data center. The excess amount has been going into the State's general revenue fund. Due to the specific language in the statute creating the funding for the workforce, the Board may discontinue collection of those fees if they are not being budgeted for the data center. The State Comptroller's office approved this reduction resulting in a potential reduction of \$3 for RNs and \$2 for LVNs. As a result of the budgetary needs and the designated funds, the net result is an adjustment in some of the fees.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Katherine Thomas, executive director, has determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the Board will raise the requisite funds and be able to hire the needed employees to more effectively accomplish its mission. There will be no effect on small businesses. The affected individuals will see higher fees (Advanced Practice Nurses) and lower fees (Licensed Vocational Nurses) as a result of these proposed amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to joy.sparks@bne.state.tx.us; or by facsimile to (512) 305-8101.

The proposed amendments of this chapter are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

No statutes, articles, or codes are affected by this proposal.

#### §223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

- (1) Examination: \$100;
- (2) Endorsement: \$161;
- (3) Licensure renewal (each biennium): [~~\$67~~];
  - (A) Registered Nurse (RN): \$67; and
  - (B) Licensed Vocational Nurse (LVN): \$58;
- (4) reactivating from inactive status:
  - (A) less than four years \$10 [~~\$5~~] plus current renewal fee;
  - (B) more than four years \$20 [~~\$10~~] plus current renewal fee;
- (5) late fee for reactivation from delinquent status:
  - (A) less than 90 days \$60 [~~\$50~~] plus current licensure renewal fee;
  - (B) more than 90 days \$120 [~~\$100~~] plus current licensure renewal fee;
- (6) duplicate or substitute license: \$25 [~~\$20~~];
- (7) duplicate or substitute permanent certificate: \$25 [~~\$20~~];

- (8) issuance of a temporary permit under §301.258: \$25 [~~\$15~~];
- (9) approval of new nursing education programs: \$500;
- (10) verification of licensure: \$5;
- (11) verification of records: \$25 [~~\$20~~];
- (12) bad checks: \$30;
- (13) Advanced Practice Nurse initial credentials: \$100 [~~\$75~~];
- (14) declaratory order of eligibility: \$150;
- (15) eligibility determination: \$150;
- (16) docketing fee in non disciplinary matters: \$600;
- (17) Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP): \$10;
- (18) Advanced Practice Nurse renewal: \$60 [~~\$52~~];
- (19) Initial Prescriptive Authority: \$50 [~~\$25~~];
- (20) outpatient anesthesia registry renewal: \$35;
- (21) outpatient anesthesia inspection and advisory opinion: \$625;
- (22) Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants: \$39; and
- (23) Disciplinary monitoring fees as stated in a Board order.
  - (b) all fees are non-refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703094

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-6823



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52 concerning Definitions.

The amendment to §501.52 will add definitions for the terms "principal office" and "practice privilege."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarification of the terms "principal office" and "practice privilege" as those terms are used by the Board.

The probable economic cost to persons required to comply with the amendment will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose costs upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) - (17) (No change.)

(18) "Principal office" means the home office where the majority of the business entity's administration is conducted and as used in these rules home office and principal office are synonymous;

(19) [(18)] "Practice unit" means an office of a firm required to be licensed with the board for the purpose of practicing public accountancy;

(20) "Practice privilege" means the privilege for an out of state Firm or individual to provide certain Professional Services in Texas to the extent permitted under Chapter 517 of the board rules;

(21) [(19)] "Professional services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

- (A) issuing reports on financial statements;
- (B) providing management or financial advisory or consulting services;
- (C) preparing tax returns; and
- (D) providing advice in tax matters;

(22) [(20)] "Report" means, when used with reference to financial statements, either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence;

(23) [(21)] Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703167

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-7848



## CHAPTER 502. PEER ASSISTANCE

### 22 TAC §502.1

The Texas State Board of Public Accountancy (Board) proposes new rule §502.1 concerning Peer Assistance to Licensees.

The proposed new rule §502.1 will establish when the Board can refer a licensee to a peer assistance program.

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be negligible.

Mr. Treacy has determined that, for the first five-year period the proposed new rule is in effect, the public benefits expected as a result of adoption of the new rule will be greater access to peer assistance for professionals with alcohol or chemical dependency problems.

The probable economic cost to persons required to comply with the proposed new rule will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not affect small businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed new rule.

§502.1. Peer Assistance to Licensees.

(a) The board adopts the provisions contained in the HEALTH & SAFETY CODE, Chapter 467, PEER ASSISTANCE PROGRAMS, in its entirety, including any amendments enacted by the Texas Legislature.

(b) Should the board receive information regarding a licensee indicating possible substance abuse or other mental health issue, the board may, in addition to any other action:

(1) refer the licensee to an approved peer assistance program; or

(2) require the licensee to participate in or complete a course of treatment or rehabilitation.

(c) An approved peer assistance program that receives a report or referral under subsection (b) of this section or a report under §467.005(a) of the Health and Safety Code, may intervene to assist the licensee to obtain and complete a course of treatment and rehabilitation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703182

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-7848



## CHAPTER 511. CERTIFICATION AS A CPA

### SUBCHAPTER H. CERTIFICATION

#### 22 TAC §511.168

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.168 concerning Reinstatement of a Certificate or of a Registration.

The proposed repeal of §511.168 will repeal the rule concerning the reinstatement of a certificate or of a registration.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be negligible.



Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§511.168. *Reinstatement of a Certificate or of a Registration.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703168

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 513. REGISTRATION

### SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

#### 22 TAC §513.4

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.4 concerning Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.

The proposed repeal of §513.4 will repeal the rule concerning the registration of out-of-state practitioners with substantially equivalent qualifications.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§513.4. *Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

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## 22 TAC §513.5

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.5 concerning Notice for Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.

The proposed repeal of §513.5 will repeal the rule concerning the notice for registration of out-of-state practitioners with substantially equivalent qualifications.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed

to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§513.5. Notice for Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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## 22 TAC §513.6

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.6 concerning Board Acceptance of Out-of-State Practitioner Registration.

The proposed repeal of §513.6 will repeal the rule concerning Board acceptance of out-of-state practitioner registration.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

*§513.6. Board Acceptance of Out-of-State Practitioner Registration.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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## CHAPTER 515. LICENSES

### 22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5 concerning Reinstatement of a License.

The amendment to §515.5 will revise the procedures a former license holder must follow in order to obtain a new license, if that former license holder failed to renew his license and has moved out of state.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be equal to two times the license fee from each former license holder seeking to obtain a new license.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a reduction of the licensing fee for former license holders who have moved out of state and maintained their license in the other state.

The probable economic cost to persons required to comply with the amendment will be equal to two times the normal license fee.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose direct economic costs to small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§515.5. Reinstatement of a License.*

(a) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) A person whose license has been expired for at least one year but less than two years may renew the license by paying to the

board a renewal fee that is equal to three times the normally required renewal fee.

~~[(d)] A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.]~~

~~(d) [(e)] A licensee who was revoked under §901.502(3) or (4) of the Act, has [A person who was licensed in this state] moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexaminationby: [- The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.]~~

(1) paying the board a fee that is equal to two times the normally required renewal fee for the license;

(2) providing the Board, within 90 days of the date of the Board's receipt of the application for reinstatement, a complete application including evidence of the required licensure; and

(3) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## 22 TAC §515.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.11 concerning Exemption from Payment of the Professional Fee for Federal Government Employees.

The amendment to §515.11 will expand the professional fee exemption to include state, municipal, and county government employees.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be equal to the number of persons who qualify for the professional fee exemption and do not pay the \$200 fee.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a greater number of CPAs who qualify for exemptions.

The probable economic cost to persons required to comply with the amendment will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose an additional cost on small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§515.11. Exemption from Payment of the Professional Fee for Other than State of Texas [Federal] Government Employees.*

(a) The board may grant an exemption from the payment of the professional fee to a licensee employed by the federal government, the government of another state, or a municipal or county government of this state. To receive [received] the exemption, the licensee must submit a notarized affidavit to the board attesting to the following:

(1) the licensee is employed by one of the governmental entities identified in this subsection [federal government] and is restricted by virtue of the employment from performing any accounting services for anyone other than the employing governmental entity [federal government]; and

(2) the licensee shall not engage in the client practice of public accountancy in any manner including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company during the license period for which the exemption is granted.

(b) If the licensee subsequently engages in the client practice of public accountancy, the licensee must immediately report this fact to the board's Licensing Division and must pay the professional fee for that license period, which will not be prorated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## CHAPTER 517. TEMPORARY PRACTICE IN TEXAS

### 22 TAC §§517.1 - 517.3

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §§517.1 - 517.3 concerning Temporary Practice, Application for Temporary Permit, and Individuals Practicing under a Temporary Permit Holder, respectively.

The proposed repeal of §§517.1 - 517.3 will repeal the rules concerning temporary practice, the application for a temporary permit, and the individuals practicing under a temporary permit holder.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of redundant rules.

The probable economic cost to persons required to comply with the repeal will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§517.1. *Temporary Practice.*

§517.2. *Application for Temporary Permit.*

§517.3. *Individuals Practicing under a Temporary Permit Holder.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

### 22 TAC §517.1

The Texas State Board of Public Accountancy (Board) proposes new rule §517.1 concerning Practice by Certain Out of State Firms.

The new rule §517.1 will establish the circumstances under which an out-of-state firm must obtain either a firm license or practice privilege.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be equal to the additional license fees paid by those out-of-state firms.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of

adoption of the proposed new rule will be more out-of-state firms under the Board's jurisdiction.

The probable economic cost to persons required to comply with the new rule will be equal to the license fee paid to the Board, if applicable.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose unreasonable burdens upon small businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§517.1. Practice by Certain Out of State Firms.

(a) A firm is required to hold a firm license if the firm:

(1) establishes or maintains an office in this state; or

(2) performs for an entity with its principal office in this state;

(A) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(B) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(C) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

(b) A certified public accountancy firm that is licensed and has its primary place of business in another state and is not required to hold a firm license pursuant to subsection (a) of this section may practice in this state without a firm license or notice to the board if the firm's practice in this state is performed by an individual who holds a license under

Chapter 515 of this title or who practices under a privilege pursuant to §517.2 of this chapter.

(c) A firm described by subsection (b) of this section may exercise all the practice privileges of a firm license holder, except that the firm:

(1) may not perform the services described by subsection (a)(2) of this section; and

(2) may perform an engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board, or any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national organization adopted by the board, for an entity with its principal office in this state only if:

(A) the firm meets the requirements of §901.354(a) and (b) of the Act;

(B) the firm complies with the board's peer review program found in Chapter 527 of these rules; and

(C) the services are performed by an individual who holds a license under this chapter or practices under a privilege provided in §517.2 of this chapter and §901.462 of the Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



**22 TAC §517.2**

The Texas State Board of Public Accountancy (Board) proposes new rule §517.2 concerning Practice by Certain Out of State Individuals.

The new rule §517.2 will describe the conditions under which a CPA licensed in another state can practice in this state.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be negligible.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be greater clarity regarding the requirement to practice in this state.

The probable economic cost to persons required to comply with the new rule will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose undue burdens upon small businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§517.2. Practice by Certain Out of State Individuals.

(a) An individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of subsection (a)(1) or (2) of this section and who offers or renders professional ser-

vices in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) An individual practicing under this section must practice through a firm that holds a license under this title if, for an entity with its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(3) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703178

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-7848



## **22 TAC §517.3**

The Texas State Board of Public Accountancy (Board) proposes new rule §517.3 concerning Conditions of Practice of Out of State Firms and Individuals.

The new rule §517.3 will outline the conditions that out-of-state CPAs must comply with in order to practice in this state.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be negligible.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be greater clarity regarding an out-of-state CPA's obligations towards the Board while practicing in this state.

The probable economic cost to persons required to comply with the new rule will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose an undue burden on small businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§517.3. Conditions of Practice of Out of State Firms and Individuals.

(a) A firm or individual practicing under a privilege under this section, as a condition of the privilege of practicing without a license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the Board;

(2) must comply with the Act and the Board's rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the firm's or individual's license as the agent on whom process may be served in any action or proceeding by the board against the firm or individual.

(b) A firm or individual practicing under a privilege under this section shall promptly cease offering or rendering professional services in this state if the firm's license or individual's license or certificate to practice in the state of primary business is no longer valid.

(c) A firm that practices under §517.1 of this chapter must use the firm name that it uses in the state in which it is licensed and has its principal place of business.

(d) A firm that performs an engagement that is required to be performed in accordance with Statements on Standards and Review Services (SSARS), such as compilations and reviews, is performing the attest service and must comply with the Peer Review provisions of Chapter 527 of these rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703179

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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**CHAPTER 521. FEE SCHEDULE**

**22 TAC §521.5**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §521.5 concerning Temporary Firm Practice Permit Fee.

The proposed repeal of §521.5 will repeal the rule concerning the temporary firm practice permit fee.

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be negligible.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be negligible.

Mr. Treacy has determined that, for the first five-year period the proposed repeal is in effect, the public benefits expected as a result of adoption of the repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be negligible.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose an undue burden upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which provides the agency



with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed repeal.

*§521.5. Temporary Firm Practice Permit Fee.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703180

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



**22 TAC §521.14**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.14 concerning Eligibility Fee.

The proposed amendment to §521.14 will reduce the eligibility fee from \$70.00 to \$35.00 for each section of the CPA exam.

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose an additional cost to the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce the cost to the state.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be a loss of \$35.00 per section of the CPA exam per applicant.

Mr. Treacy has determined that, for the first five-year period the proposed amendment is in effect, the public benefits expected as a result of adoption of the amendment will be a reduced fee for taking the CPA exam.

The probable economic cost to persons required to comply with the proposed amendment will be reduced by \$35.00 per section of the CPA exam.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment reduces the costs for eligibility for the CPA exam.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public

Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

*§521.14. Eligibility Fee.*

(a) Upon implementation of the computer-based CPA examination an eligibility fee shall become effective for each section for which an applicant is eligible and applies.

(1) Auditing and Attestation--~~\$35.00.~~ [~~\$70.00.~~]

(2) Financial Accounting and Reporting--~~\$35.00.~~ [~~\$70.00.~~]

(3) Regulation--~~\$35.00.~~ [~~\$70.00.~~]

(4) Business Environment and Concepts--~~\$35.00.~~ [~~\$70.00.~~]

(b) The eligibility fee shall be paid to the Texas State Board of Public Accountancy. This is a non-refundable fee.

(c) The eligibility fee may be paid electronically through the State of Texas online e-pay system and applicable processing fees for the use of this service will be added to the total fee paid.

(d) Upon receipt by the board of an incomplete application, an applicant has 180 days to complete the application. If the application is not completed within that time, the application is terminated, the eligibility fee is forfeited and the applicant must file a new application and pay a new eligibility fee to continue with the examination process.

(e) The fee paid shall be valid for 90 days after the board determines that an applicant is eligible for a section of the CPA examination. The board may extend the 90-day eligibility to accommodate the psychometric evaluation and performance of test questions by the test provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703183

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-7848

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**CHAPTER 527. PEER REVIEW**

**22 TAC §527.4**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4 concerning Enrollment and Participation.

The proposed amendment to §527.4 will require out-of-state firms with practice privileges in this state to comply with peer review programs in their home states.

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be negligible.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be negligible.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed amendment will be negligible.

Mr. Treacy has determined that, for the first five-year period the proposed amendment is in effect, the public benefits expected as a result of adoption of the amendment will be higher quality service from firms practicing in Texas.

The probable economic cost to persons required to comply with the proposed amendment will be related to enrolling and participating in peer review programs in their home states, if applicable.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional costs on small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 4, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes

the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§527.4. *Enrollment and Participation.*

(a) - (g) (No change.)

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act and §517.1 and §517.2 of these regulations must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act and Chapter 517 of these regulations.

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703181

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 305-7848

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**PART 26. TEXAS BOARD OF  
LICENSURE FOR PROFESSIONAL  
MEDICAL PHYSICISTS**

**CHAPTER 601. MEDICAL PHYSICISTS**

**22 TAC §§601.1 - 601.22**

The Texas Board of Licensure for Professional Medical Physicians (board), with the approval of the Executive Commissioner of the Health and Human Services Commission (commission) proposes amendments to §§601.1 - 601.22, concerning the licensing and regulation of medical physicists.

**BACKGROUND AND PURPOSE**

The Texas Legislature passed House Bill 2680, 79th Legislature, Regular Session (2005), relating to reduced fees for retired health professionals, including medical physicists, engaged in the provision of voluntary charity care. Additionally, new language related to emergency suspension was added by Acts 2003, 78th Legislature, Chapter 326, §1. These rules are relating to the licensure and regulation of medical physicists. Amendments are necessary to update and clarify the rules.

The fiscal impact to the state related to the reduction in license renewal fees related to retired medical physicists providing voluntary charity care cannot be estimated. It is unknown how many of the 375 currently licensed medical physicists will choose to provide voluntary charity care upon reaching retirement age.

The amendments constitute the state agency review required by Government Code, §2001.039. Sections 601.1 - 601.22 have

been reviewed and the board has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

Amendments to §601.1 reflect new language to include retired medical physicists performing voluntary charity care.

Amendments to §601.2 reflect the name change from the Texas Department of Health to the Department of State Health Services; and include new language based on the current rules for Texas Regulations for Control of Radiation.

Amendments to §601.3 reflect update language regarding the policy against discrimination.

Amendments to §601.4 delete language related to requirements for a one-year license renewal term; and add new language and the fee for retired medical physicists.

Amendments to §601.5 reflect clarification and update language.

Amendments to §601.6 reflect language update on application procedures.

Amendments to §601.7 revise the title of the rule and update language.

Amendments to §601.8 revise the title of the rule and refine the qualifications for new applicants to meet current standards in the field.

Amendments to §601.9 reflect language to update renewal form sent to department and delete the word board.

Amendments to §601.10 remove the requirement that copies of documents have to be certified or notarized submitted in connection with a name change.

Amendments to §601.11 reflect the deletion of language related to requirements for a one-year license renewal term;

Amendments to §601.12 reflect language that a notice of approval of application will be sent to applicant. A license is sent as approval of application.

Amendments to §601.13 updated language to add mail code.

Amendments to §601.14 update language to read licensed medical physicists.

Amendments to §601.15 update language to read a person with a criminal background.

Amendments to §601.16 update language to change offenses from Class B to Class A; remove the word notarized and add language for emergency suspension.

Amendments to §601.17 update language for clarification on returning a license.

Amendments to §601.18 update language to include board name and mailing address.

Amendments to §601.19 update language for noncompliance with child custody order.

Amendments to §601.20 reflect the deletion of language related to requirements for a one-year license renewal term; and clarify language for continuing education regarding .5 hours to 30 minutes; remove language pertaining to agency and include all organizations; and remove language regarding a licensee filing a continuing education report with the board; and reflect the dele-

tion of 180 day extension for continuing education since the program is on a two year renewal term.

Amendments to §601.21 update language for the role of a service engineer.

Amendments to §601.22 revise references to rules and update language.

#### FISCAL NOTE

Pam K. Kaderka, Executive Secretary, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Kaderka, has also determined that there will no economic costs to small businesses or micro-businesses required to comply with the proposed rules. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections. There is no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Ms. Kaderka has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of medical physicists.

#### REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Executive Secretary, Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6655 or by email to Pam.Kaderka@dshs.state.tx.us Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been

reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §602.151, which authorizes the board to adopt rules necessary for the performance of the board's duties; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect Occupations Code, Chapter 602.

##### §601.1. *Purpose and Scope.*

(a) (No change.)

(b) Scope. These sections cover definitions of words and terms used in this chapter; establish general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists (board); establish a schedule of fees, criteria for exemptions, and application procedures for licensure as a medical physicist; establish qualification requirements for licensure by examination; establish eligibility requirements a person must meet for obtaining a temporary license; establish requirements for license issuance and license holder responsibilities, and license renewal; establish the time periods and procedures the board shall follow in processing applications for or renewal of a license; delineate the board's procedures in handling a petition for adoption of a rule; establish a code of ethics; establish guidelines and criteria on eligibility of persons with criminal backgrounds to obtain a license; establish standards for handling violations, complaints and subsequent actions; sets procedures a licensee must follow for surrender of a license; and establish procedures for holding formal hearings; establish standards for suspension of license for failure to pay child support; establish continuing education requirements; establish medical physics specialties and scope of practice; and establish standards for issuance of a provisional license; and establish guidelines for retired medical physicist performing voluntary charity.

##### §601.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Commissioner--The Commissioner [commissioner] of the Department of State Health Services [health].

(6) Department--The [Texas] Department of State Health Services.

(7) - (20) (No change.)

(21) Radiological procedure--A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures.

(A) The activities and services which fall within the definitions in the Act of the practice of medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures.

(B) The activities and services which fall within the Texas Regulations for Control of Radiation, concerning radiographic

entrance exposure rates; entrance exposure rates for fluoroscopy; dose measurements of the radiation output of computed tomography (CT) x-ray systems; equipment performance evaluations; surveys, calibrations, and spot checks for therapeutic radiation systems operating above 150 kVp up to 1MeV, and surveys, calibrations, and spot checks for therapeutic radiation systems operating at energies of 1MeV and above, [25 TAC §289.227(k); (q); (o)(3)(D); (p)(3) and §289.229(h)(2)(D)(i) - (iii) and (3)(C)(iv);] are not radiological procedures.

(22) - (25) (No change.)

##### §601.3. *The Board's Operations.*

(a) - (k) (No change.)

(l) Policy against discrimination. The board shall make no decision in the discharge of its statutory authority based on any person's race, creed, gender [sex], genetic information, sexual orientation, religion, color, national origin, physical condition, geographical distribution, age, or economic status.

##### §601.4. *Fees.*

This section sets out the fees for licensure as a medical physicist as prescribed by the board.

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) - (iii) (No change.)

(iv) upgrade of temporary license [to annual license]--\$75;

(B) (No change.)

[(C) renewal fee for a license issued for a one year term:]

[(+ first specialty--\$125; and]

[(+ additional specialties--\$50 each;]

(C) [(D)] renewal fee for a license issued for a two-year term:

(i) first specialty--\$250; and

(ii) additional specialties--\$50 each;

(D) [(E)] one to 90-day penalty fee--one-half of the renewal fee (plus the renewal fee that was due at the time of expiration);

(E) [(F)] 91-day to two-year penalty fee--the renewal fee (plus the renewal fee that was due at the time of expiration);

(F) [(G)] license replacement fee--\$20;

(G) [(H)] examination fee--the fee for the specialty examination as set by contract with the examining body; [and]

(H) [(I)] child support reinstatement fee--\$50; and[-]

(I) retired medical physicist biennial renewal fee--\$65.

(2) - (7) (No change.)

##### §601.5. *Exemptions.*

(a) - (b) (No change.)

(c) The Act and this chapter do not apply to:

(1) (No change.)

(2) a person certified as a medical radiologic [radiologic] technician practicing under the Medical Radiologic Technologist Certification Act, (Texas Occupations Code, Chapter 601);

(3) - (5) (No change.)

(d) (No change.)

*§601.6. Application Procedures.*

(a) (No change.)

(b) Required application materials.

(1) Application form. The application form shall include the following:

(A) - (H) (No change.)

(I) the signature of the applicant which has been dated [and notarized].

(2) (No change.)

(c) - (d) (No change.)

*§601.7. Reciprocity [Licensing by Endorsement or Reciprocity].*

(a) Reciprocity. The board may waive any prerequisite for obtaining a medical physicist license to an applicant [a person] who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of the Act.

(b) (No change.)

*§601.8. Licensure by Examination [Eligibility For Examination].*

(a) Eligibility. To take a specialty examination for a medical physicist license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree:

(A) (No change.)

(B) from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses [nuclear engineering]; or

(C) from an accredited college or university:

(i) (No change.)

(ii) have twenty semester hours (30 quarter hours) of upper division semester hour credit [undergraduate] or graduate level physics courses, if offered:

(I) - (III) (No change.)

(2) - (4) (No change.)

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. All work experience must have been completed in the five years preceding the date of application for licensure as a medical physicist, upgrade or temporary license [(the date of receipt of the application for a medical physicist license or for the upgrade of a temporary license to a medical physicist license)] in the medical physics specialty for which application is made.

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. An applicant having a foreign degree(s) must

furnish at the applicant's own expense an evaluation of the foreign degree(s) from a commercial evaluation service. The degree evaluation must be sent directly to the board by the evaluation service. An applicant must submit with the application complete certified copies or documented proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(d) - (h) (No change.)

*§601.9. Temporary License.*

(a) - (c) (No change.)

(d) Subsequent renewals may be granted by the executive secretary if the licensee requests the renewal in writing prior to the expiration of the temporary license; and:

(1) - (2) (No change.)

(3) submits to the department [board] the completed renewal form and the renewal fee.

(e) - (h) (No change.)

*§601.10. License Issuance and License Holder Requirements.*

(a) - (c) (No change.)

(d) A licensee shall notify the board of any change in name, preferred mailing address, or place(s) of business or employment within 30 days of any change.

(1) (No change.)

(2) Notification of name changes shall include a [certified or notarized] copy of a marriage certificate, court decree, or a social security card reflecting the change and the license replacement fee. The licensee shall return any previously issued license.

*§601.11. License Renewal.*

(a) General.

(1) The medical physicist license shall be valid through the licensee's [next] birth month. [; however, when the birth month occurs within four months, the license shall be issued for that period plus the next full renewal period in order to establish a staggered renewal system.] The renewal date of a medical physicist license shall be the last day of the licensee's birth month.

(2) - (6) (No change.)

(b) License renewal.

(1) - (5) (No change.)

[(6) The board shall issue a renewal license to a licensee who complies with paragraph (3) of this subsection but who fails to complete the continuing education requirements (if required) for relicensure as set out in §601.20 of this title. The renewal license shall expire 180 days after the last day of the licensee's birth month. If the deficiency is corrected and proof of completion of the continuing education requirements is sent to the board within the 180 day period, the board shall issue a renewal license which expires on the last day of the licensee's next birth month. An licensee who does not correct the deficiency within 180 days shall not be allowed to extend or renew the license.]

[(7)] The license of a person who made a timely and sufficient application for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(c) Late renewal.

(1) If a person's license has been expired for not more than 90 days, the person may renew the license by submitting the license renewal form with the one to 90-day penalty fee and a completed continuing education report form (if required). ~~[A license issued under this subsection shall expire on the licensee's birth month. The person is not eligible for a 180 day license as described in subsection (b)(6) of this section.]~~

(2) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by submitting the license renewal form with the 91-day to two year penalty fee. The person must comply with the continuing education requirements (if required) for renewal as set out in §601.20 of this title before the late renewal is effective. ~~[The license will expire on the licensee's birth month.]~~

(3) (No change.)

(d) (No change.)

§601.12. *Application and Renewal Processing Times.*

(a) Application processing.

(1) The following periods of time shall apply from the date of receipt of an application for a license or renewal of a license until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. ~~[A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application.]~~ The time periods are as follows:

(A) - (B) (No change.)

(2) (No change.)

(b) - (d) (No change.)

§601.13. *Petition for Adoption of Rules.*

(a) (No change.)

(b) Consideration and disposition of the petition.

(1) (No change.)

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rulemaking ~~[rule-making]~~ procedures in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. The board may deny parts of the petition or institute rulemaking ~~[rule-making]~~ procedures on parts of the petition.

(3) (No change.)

(4) If the board initiates rulemaking ~~[rule-making]~~ procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(c) (No change.)

§601.14. *Code of Ethics.*

(a) (No change.)

(b) A licensee shall maintain confidentiality of physician records in accordance with the Medical Practice Act, Texas Occupations Code, Chapter 152, and other state statutes or rules where such statutes or rules apply to a licensed medical physicist ~~[licensee]~~.

(c) - (n) (No change.)

§601.15. *Criminal Backgrounds.*

(a) This section establishes guidelines and criteria on the eligibility of a person ~~[persons]~~ with a criminal background ~~[backgrounds]~~ to obtain licensure as a medical physicist.

(b) - (e) (No change.)

§601.16. *Violations, Complaints, and Subsequent Actions.*

(a) Content. This section establishes standards relating to:

(1) offenses which are a Class A ~~[B]~~ misdemeanor under the Act;

(2) - (5) (No change.)

(b) Types of offenses. A person commits a Class A ~~[B]~~ misdemeanor if the person intentionally or knowingly:

(1) - (2) (No change.)

(c) Disciplinary action. The board may refuse to issue or renew a license, may suspend, suspend on an emergency basis or revoke a license, may reprimand a licensee, or may place a licensee on probation for any of the following:

(1) - (5) (No change.)

(d) (No change.)

(e) Investigation of complaints.

(1) The executive secretary or the board's designee shall request a ~~[notarized]~~ response from the licensee or person against whom a complaint has been filed.

(2) - (7) (No change.)

(f) Reprimand, suspension, revocation, denial, probation, or administrative penalty, or emergency suspension.

(1) - (4) (No change.)

(5) If an administrative penalty is imposed the amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days may not exceed \$2,500.

(g) - (i) (No change.)

§601.17. *Surrender of License.*

(a) Surrender by licensee.

(1) (No change.)

(2) Return ~~[Tender]~~ of the license may be by delivery by any means to the office of the board, return receipt requested.

(b) - (d) (No change.)

§601.18. *Formal Hearing Procedures* ~~[Formal Hearings]~~.

(a) - (i) (No change.)

(j) Appeals. All appeals from final board orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be made to the executive secretary, Texas Board of Licensure for Professional Medical Physicists, MC-1982, 1100 West 49th Street, Austin, Texas 78756.

§601.19. *Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.*

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or failure to comply with a court order relating to child custody, the executive secretary shall immediately determine if the board has issued a license to the obligor named on the order, and, if a license has been issued:

(1) - (3) (No change.)

(b) - (h) (No change.)

§601.20. *Continuing Education Requirements.*

(a) - (b) (No change.)

(c) Hour requirements for continuing education. A licensee must complete 24 contact hours of continuing education acceptable to the board ~~[within a 24-month period]~~.

(1) - (3) (No change.)

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience falls into one or more of the following categories only in increments of 30 minutes ~~[.5 hours]~~:

(1) (No change.)

(2) Participation in conferences sponsored by regulatory organizations ~~[such as the Texas Department of Health Bureau of Radiation Control (BRC)]~~ or other organizations acceptable to the board; or

(3) - (7) (No change.)

(e) Reporting of continuing education. ~~[Each licensed medical physicist is responsible for and shall complete and file with the board at the time of license renewal; a continuing education report form approved by the board listing the title, date, location and number of hours for each activity for which credit is claimed.]~~ The licensee shall maintain documentation of continuing education.

(1) - (4) (No change.)

(f) ~~[Failure to complete the required continuing education:]~~

~~[(4)] A licensed medical physicist who has failed to complete the requirements for continuing education as specified in subsection (b) of this section shall return the license to the department and shall not represent himself or herself as a medical physicist in any manner. The person may renew the license or reapply for a new license in accordance with §601.11 of this title (relating to License Renewal). [may be granted a 180 day license as described in §601.11 of this title. The 180 day extension is the maximum that shall be granted and there will be no exceptions; nor may an additional extension period be granted.]~~

~~[(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from the date the previous continuing education period ended. In other words; the extension period is borrowed from the next reporting period.]~~

~~[(3) A licensed medical physicist who has not corrected the deficiency by the expiration date of the 180 day extension license shall be considered as noncompliant with the renewal requirements and may no longer practice medical physics under the expired license.]~~

~~[(4) The person may renew late under §601.11 of this title after all the continuing education requirements have been met. A person who renews late is not eligible for a 180 day extension:]~~

(g) (No change.)

*§601.21. Medical Physics Specialties and Scope of Practice.*

(a) (No change.)

(b) Role of the service engineers. Service engineers, when installing or maintaining medical equipment, conduct tests or activities which are similar or identical to tests or activities identified in these rules. Such activity does not constitute the practice of medical physics provided that:

(1) - (3) (No change.)

(4) the test or activity performed by the service engineer is required to install, maintain or repair the medical equipment.

(c) (No change.)

*§601.22. Provisional Licenses.*

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) - (2) (No change.)

(3) is supervised ~~[sponsored]~~ by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section.

(b) (No change.)

(c) The board shall issue a provisional license if:

(1) the provisional license holder is eligible to be certified under §601.7 of this title (relating to Reciprocity ~~[Licensing by Endorsement or Reciprocity]~~); or

(2) the provisional license holder passes the part of the examination under §601.8 of this title (relating to Licensure by Examination ~~[Eligibility For Examination]~~) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and;

(A) - (B) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703092

Philip Bourland  
Chair

Texas Board of Licensure for Professional Medical Physicists  
Earliest possible date of adoption: September 2, 2007  
For further information, please call: (512) 458-7111 x6972

## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER B. ORGANIZATION

#### 22 TAC §850.62

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §850.62, regarding complaints against activities that are regulated by TBPG. The proposed amendment clarifies that complaints can be filed against unlicensed individuals or entities if their activities are regulated by the Board.

Vincent Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Houston has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhancement of the professional practice of geoscientists by en-

sure that only qualified and licensed persons and entities practice geoscience before the public. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to [mroman@tbpge.state.tx.us](mailto:mroman@tbpge.state.tx.us) or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of the proposed amendment to this section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. The amendment is also proposed under §1002.251 and §1002.351, which require those persons or entities practicing geoscience before the public to be licensed by TBPGE.

The proposed amendment implements the Texas Occupations Code, §§1002.151, 1002.251 and 1002.351.

§850.62. *General Powers and Duties of the Board.*

(a) Complaints against a person or entity whose activities are regulated by the Board must be made in writing, sworn to by the person making the complaint, and filed with the secretary-treasurer of the Board at the office of the Board in Austin.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703077

Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



## SUBCHAPTER C. FEES

### 22 TAC §850.82

The Texas Board of Professional Geoscientists (TBPGE or Board) proposes an amendment to 22 TAC §850.82, regarding dishonored check fees. The proposed amendment clarifies fees for dishonored payments.

Vincent Houston, Acting Executive Director of TBPGE, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Houston has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhancement of the professional practice of geoscientists by ensuring that only qualified and licensed persons and entities prac-

tice geoscience before the public, and clarification of fees for dishonored payments. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to [mroman@tbpge.state.tx.us](mailto:mroman@tbpge.state.tx.us) or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of the proposed amendment to this section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.152, which authorizes the Board to set reasonable and necessary fees.

The proposed amendment implements the Texas Occupations Code, §1002.151 and §1002.152.

§850.82. *Insufficient Funds [Dishonored Check] Fee.*

If a payment [check], drawn to the Texas Board of Professional Geoscientists is dishonored by a payor, the Board shall charge a fee of \$25 to the drawer or endorser for processing the dishonored payment [check]. The Board shall notify the drawer or endorser of the fee by sending a request for payment [of the dishonored check] and the processing fee by certified mail to the last known business address of the person as shown in the records of the Board. If the Board has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the Board has mailed the request is a violation of these rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



## CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

### SUBCHAPTER A. LICENSING

#### 22 TAC §851.28

The Texas Board of Professional Geoscientists (TBPGE) proposes an amendment to 22 TAC §851.28, concerning license renewal and reinstatement. This amendment is proposed to more closely align TBPGE rules with its enabling statute and clarifies the language regarding notification of license expiration.



Vincent Houston, Acting Executive Director of TBPB, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Houston has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhancement of the professional practice of geoscientists and clarification regarding the expiration notices sent by the Board to its licensees. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to [mroman@tbp.state.tx.us](mailto:mroman@tbp.state.tx.us) or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of the proposed amendment to this section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. It also corresponds with §1002.301, relating to license renewal guidelines.

The proposed amendment implements the Texas Occupations Code §1002.151 and §1002.301.

*§851.28. License Renewal and Reinstatement.*

(a) The Board will mail a renewal notice to the last recorded address of each license holder, at least 60 [30] days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the license holder to pay the required renewal fee together with any applicable penalty at the time of payment.

(b) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



**22 TAC §851.31**

The Texas Board of Professional Geoscientists (TBPB) proposes an amendment to 22 TAC §851.31, concerning temporary licenses. The proposed amendment removes redundant language from the rule.

Vincent Houston, Acting Executive Director of TBPB, has determined that for the first five-year period the amendment is in effect

there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Houston has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhancement of the professional practice of geoscientists and clarification of the rule defining the requirements for temporary licensure in the State of Texas. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to [mroman@tbp.state.tx.us](mailto:mroman@tbp.state.tx.us) or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of the proposed amendment to this section has been published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.258, which allows the Board to issue temporary licenses.

The proposed amendment implements the Texas Occupations Code §1002.151 and §1002.258.

*§851.31. Temporary License.*

(a) (No change.)

(b) A temporary license holder is subject to all other rules and legal requirements to which a standard license is subject. The Board may issue a temporary license to an applicant currently licensed in another jurisdiction who [seeks a license in this state and who]:

(1) has held such a license in good standing as a geoscientist for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this Board [or is licensed in another jurisdiction] and has passed a national or other examination recognized by the Board relating to the discipline of geoscience for which licensure is being sought;

(2) - (3) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703078

Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



**22 TAC §851.80**

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.80, regarding licensing fees set by TBPG. The proposed amendment updates the examination fee for geophysics, and adds the fee for insufficient funds.

Vincent Houston, Acting Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Houston has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by ensuring that only qualified and licensed persons and entities practice geoscience before the public, and clarification of the fees set by TBPG. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to [mroman@tbpg.state.tx.us](mailto:mroman@tbpg.state.tx.us) or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendment is published in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendment to this section has been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. The amendment is also proposed under §1002.152, which authorizes the Board to set reasonable and necessary fees.

The proposed amendment implements the Texas Occupations Code, §1002.151, and §1002.152.

§851.80. *Fees.*

- (a) - (b) (No change.)
- (c) Examination processing fee of \$25 for all disciplines and examination fee:
  - (1) Geology--Fundamentals and Practice as determined by ASBOG.
  - (2) Geophysics--\$175 [~~Fundamentals \$150~~].
  - ~~{(3) Geophysics--Practice \$150.}~~
  - (3) ~~[(4)]~~ Soil Science--Fundamentals and Practice as determined by CSSE.
- (d) - (m) (No change.)
- (n) Insufficient funds fee--\$25.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Vincent Houston  
Acting Executive Director  
Texas Board of Professional Geoscientists  
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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes an amendment to §97.91, concerning the delegation of authority to give informed consent for immunizations of a minor, and repeal of §97.92, concerning recommendations for documentation of reason(s) parent, managing conservator, guardian, or other person could not be contacted; and amendments to §§97.151 - 97.153, 97.155, and 97.156 and new §97.154, concerning the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States.

#### BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.91 - 97.92 have been reviewed and the department has determined that reasons for proposing §97.91 continue to exist because a rule on this subject is needed. However, §97.92 is proposed for repeal due to redundant language.

Section 97.91 provides that certain information must be obtained prior to immunizations of a minor when the parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian. In addition, the proposed amendment provides that immunizations may also be administered as provided in Family Code, §32.101. The proposed amendments clarify these requirements, and include a cross-reference to the Family Code.

Since Family Code, §32.101, provides requirements related to who shall be allowed to grant consent to immunize a child (i.e., parent/legal guardian) and who shall be allowed to grant consent in the event that parent/legal guardian is not available, the agency proposes to repeal §97.92 in its entirety in order to provide clarity to the public concerning who may provide consent to immunize a child under various circumstances. The Family Code provision speaks to the scenarios which §97.92 addresses; therefore, the department proposes repealing §97.92 as redundant.

Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.151 - 97.153 and 97.155 - 97.156 have been reviewed and the department has determined that reasons for proposing the sections continue to exist because rules on this subject are needed. New §97.154 is proposed so that there is a section that consolidates the criteria for operating as a vaccination center, and clarifies those criteria. Proposed

amendments to §§97.151 - 97.153 and §§97.155 - 97.156 and new §97.154, concern the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The department provides this authorization by issuing Uniform Stamps to designated physicians. Sections 97.151 - 97.156 cover the criteria by which the department issues the Uniform Stamps to physicians, and processes for denial, revocation, suspension, or non-renewal.

In the four-year review of these rules, the amendments to §§97.151 - 97.153 and 97.155 - 97.156 update the agency, division, section, and branch names, plus, clarify language, simplify processes, reorder text, and more closely follow federal guidelines. After conducting a cost analysis, the branch determined that the existing \$25 fees for Uniform Stamp application, renewal, and replacement were not sufficient for the department to recover its costs. The Uniform Stamp application, renewal, and replacement fees are increased for a reasonable recovery of the department's costs. However, all fees remain waived for public health departments, public health districts, and public health regions.

The department consulted with the Health Service Regions, Texas Association of Local Health Officials, the department's Infectious Disease Control Unit, Texas Academy of Family Physicians, Texas Medical Association, and the current directory of authorized yellow fever vaccine providers during the Vaccination Stamps rule development process.

#### SECTION-BY-SECTION SUMMARY

Section 97.91(a) is amended to include the phrase "parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian" as clarifying language. Language concerning contacting a "parent/guardian" is proposed to be deleted because it causes confusion and is not necessary.

In §97.91, subsections (b) and (c)(1) are amended to include "parent/legal guardian" as clarifying language. Subsection (d) is amended for clarification.

Section 97.91(e) is added to include "immunizations may also be administered as provided in Family Code, §32.101" as a cross-reference to an existing statutory provision, which speaks to the situations that §97.92, addresses. Section 97.92 is therefore proposed for repeal as redundant language.

Amendments to §97.151 update the agency, division, section, and branch names, plus, provide consistency in terminologies. The amendments to §97.152 update agency names and terminologies. Amendments to §97.153 simplify the process by deleting current language which requires administration of 20 or more doses of yellow fever vaccine annually for Uniform Stamp eligibility, plus, clarify language for the Uniform Stamp's issuance and responsibilities. New language that physicians are encouraged, but not required, to report cases of febrile illness potentially caused by yellow fever vaccination to the CDC/FDA Vaccine Adverse Events reporting System (VAERS) is added. These amendments more closely follow federal guidelines, which are referenced in the section. Also, the Uniform Stamp application, renewal, and replacement processes and fees are updated. New §97.154 reorders the criteria for operating a vaccination center into one section and clarifies those requirements. The amendments to §97.155 update language for consistent terminology. The amendments to §97.156 update division, branch and department names, clarifies that renewals are also encom-

passed in subsection (a), plus, subsection (b) is clarified to state that hearings, when available, occur if they are requested.

#### FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that §97.91 will be in effect, if future funds are appropriated at current levels, there will be no additional costs to state or local government as a result of enforcing and administering the section as proposed.

Mr. Blass has also determined that for each year of the first five years that §97.92 will no longer be in effect, there will be no additional costs to state or local government as a result of repeal of the section.

Casey Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each calendar year of the first five years that §§97.151 - 97.156 are in effect, there will be fiscal implications to the state as a result of administering the sections as proposed. The effect on state government will be an increase in revenue due to the increased Uniform Stamp fees. The Uniform Stamp application, renewal, and replacement fees are increased for a reasonable recovery of the department's costs. There will be no fiscal implications to local governments as a result of enforcing and administering the sections as proposed. The fees will remain waived for public health departments, public health districts, and public health regions.

#### SMALL AND MICRO-BUSINESS IMPACT

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with §97.91 as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

Mr. Blass has also has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because §97.92 is no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the section. There will be no impact on local employment.

Mr. Blass has determined that the price increase of the stamp is not expected to have a significant impact on small and micro-businesses that comply with §§97.151 - 97.156 as proposed, and is necessary to cover the costs incurred by the department; furthermore, the possible alteration of small and micro-business procedures should have a positive impact on those small and micro-businesses as a result of improved efficiency. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years that the amendments to §97.91 and the repeal of §97.92 is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections as proposed is to provide clarity concerning the delegation of authority to give informed consent for immunizations of a minor when a parent/legal guardian is not present

and another adult purports to have consent of that parent/legal guardian.

In addition, Mr. Blass has also determined that for each year of the first five years that §§97.151 - 97.156 are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to ensure the safety of the public, and to simplify and clarify processes.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on §§97.91 - 97.92 may be submitted to Tim Hawkins, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 3394, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Comments on amendments to §§97.151 - 97.153 and 97.155 - 97.156 and new 97.154, may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Division of Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111 extension 6658 or by email to Victoria.Brice@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The department's Deputy General Counsel, Linda Wiegman, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

### SUBCHAPTER C. CONSENT FOR IMMUNIZATION

#### 25 TAC §97.91

##### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision

of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 81 and 1001; Government Code, Chapter 531; Education Code, §§38.001 and 51.933; and Human Resources Code, §42.043.

§97.91. *Delegation of Authority to Give Informed Consent for Immunizations of a Minor:*

(a) Certain information must be obtained prior to immunizations of a minor when the parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian. [parent/guardian can be contacted but another adult is giving consent.]

(b) The information may be hand written or typed and should be completed on each minor for each clinic visit when an adult other than the parent/legal guardian [parent/guardian] is providing consent for the immunizations.

(c) The delegation of authority to consent for immunization of a minor shall include the following information:

(1) the signature of parent, managing conservator, legal guardian, or other person authorized to give consent;

(2) the name and birthdate of minor;

(3) the name of the adult giving consent for immunizations of the minor; and

(4) the relationship of the adult to the minor for whom they are giving consent.

(d) The delegation of authority statement must contain the information in subsection (c) of this section and could resemble the following.

Figure: 25 TAC §97.91(d)

(e) Immunizations may also be administered as provided in Family Code, §32.101.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 19, 2007.

TRD-200703072

Linda Wiegman

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 458-7111 x6972



#### 25 TAC §97.92

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

##### STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and

human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Health and Safety Code, Chapters 81 and 1001; Government Code, Chapter 531; Education Code, §§38.001 and 51.933; and Human Resources Code, §42.043.

*§97.92. Recommendations for Documentation of Reason(s) Parent, Managing Conservator, Guardian, or Other Person Could Not Be Contacted.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 19, 2007.

TRD-200703073

Linda Wiegman

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: September 2, 2007

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER G. VACCINATION STAMPS

### 25 TAC §§97.151 - 97.156

#### STATUTORY AUTHORITY

The amendments and new rule are authorized by Health and Safety Code, §81.021; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rule affect Health and Safety Code, Chapters 81 and 1001; Government Code, Chapter 531; Education Code, §§38.001 and 51.933; and Human Resources Code, §42.043.

*§97.151. Purpose and Scope.*

The U.S. Public Health Service has designated the Department of State Health Services [Texas Department of Health] as the governmental entity in the State of Texas which is responsible for determining which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The department provides this authorization by issuing Uniform Stamps [vaccination stamps] to designated physicians. These sections cover the criteria by which the department issues the Uniform Stamp and the criteria for designating and operating a Vaccination Center [yellow fever vaccination stamp to physicians].

*§97.152. Definitions.*

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Department--The Department of State Health Services [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756.

(2) Branch [Division]--The Immunization Branch, Disease Prevention and Intervention Section, Department of State Health Services [Division, Bureau of Immunization and Pharmacy Support, Texas Department of Health].

(3) Physician--A physician licensed to practice medicine in the State of Texas.

(4) Vaccination Center [Site]--The location where a physician is authorized to administer yellow fever vaccine.

(5) Uniform Stamp [Yellow fever vaccination stamp]--A [vaccination] stamp issued by the branch [department] to a physician for use in validating certificates of yellow fever vaccination [authorizing him or her to purchase and administer yellow fever vaccine] for persons who travel outside the United States.

*§97.153. Criteria for Issuing Uniform [Yellow Fever] Stamps to Physicians.*

Uniform Stamps may be issued to physicians holding a current Texas medical license, for use only at the specific vaccination center designated on the application. If a physician practices at more than one vaccination center, a separate application for each is required.

(1) Physicians may apply for the Uniform Stamp by sending an application form to the branch. Application forms may be obtained from the branch or online at [www.immunizetexas.org](http://www.immunizetexas.org).

(2) Physicians are authorized to use the Uniform Stamp solely for the purpose of validating administration of yellow fever vaccine on vaccination certificates issued at the approved vaccination center indicated on their application.

(3) Physicians are authorized to use only the Uniform Stamp assigned to them. Uniform Stamps may not be assigned, loaned, or given to another person or physician except those working under supervision of the physician holding the stamp. The physician will at all times be responsible for the Uniform Stamp.

(4) A physician shall report immediately to the branch any loss or theft of the Uniform Stamp.

(5) Physicians are encouraged to report cases of febrile illness potentially caused by yellow fever vaccination to the CDC/FDA Vaccine Adverse Events Reporting System (VAERS <http://www.vaers.hhs.gov/>).

(6) U.S. Public Health Services (PHS) requirements. The PHS requirements are found, as follows:

(A) Code of Federal Regulations, Title 42-Public Health, Part 71-Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps; and

(B) PHS publications entitled, Division or Quarantine Circular No.106; Advisory Memorandum No.66; and Advisory Memorandum No.72.

(C) The department adopts the PHS requirements listed in subparagraphs (A) and (B) of this paragraph by reference. Copies of the requirements are available upon request from the Immunization Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas.

[(a) Previous stamp holders.]

[(1) Physicians who have administered 20 or more doses of yellow fever vaccine for one year prior to the effective date of this section are authorized to receive a new yellow fever vaccination stamp. Physicians may apply for the stamp by sending an application form to the division in accordance with the requirements of subsection (d) of this section. Physicians shall return their old stamps to the division upon receipt of the new stamp.]

[(2) Physicians who have administered less than 20 doses of yellow fever vaccine for one year preceding the effective date of this section are required to return their old stamps to the division within 60

days after the effective date of this section. These physicians may be authorized to receive new stamps only for valid cause. The division will determine valid cause on an individual basis. The criteria which the division will use to determine valid cause are as follows:]

[(A) The number of doses of yellow fever vaccine administered on an annual basis. Physicians who administer less than 20 doses of yellow fever vaccine will be requested to relinquish their yellow fever vaccination stamp.]

[(B) The requirement to administer 20 doses of yellow fever on an annual basis may be waived if the stamp is issued to a physician who provides the vaccine in an underserved geographical area.]

[(b) Authorized use of a yellow fever vaccination stamp. Physicians may use the stamp only for the purposes of administering vaccines and validating immunization certificates.]

[(c) U.S. Public Health Services (PHS) requirements. Physicians shall administer yellow fever vaccines in accordance with the vaccine manufacturer and PHS requirements.]

[(1) The PHS requirements are found, as follows:]

[(A) 42 Code of Federal Regulations, Part 71, Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps, issued on January 11, 1985; and]

[(B) PHS publications entitled, "Division of Quarantine Circular No. 106," revised on January 7, 1983; Advisory Memorandum No. 66, issued on January 7, 1983; and Advisory Memorandum No. 72, issued on October 5, 1984.]

[(2) The department adopts the PHS requirements listed in paragraph (1)(A) and (B) of this subsection by reference. Copies of the requirements may be reviewed during regular working hours at the Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas.]

[(d) Application for yellow fever vaccination stamp. In order to receive a yellow fever vaccination stamp, a physician shall submit a completed application form to the division. Copies of the application forms may be obtained from the division.]

[(e) Site for use of the yellow fever vaccination stamp. A physician shall use the yellow fever vaccination stamp only at the site where the yellow fever vaccine is delivered. If the physician chooses to administer the vaccine at a site other than that designated on the current application request, prior approval must be obtained from the division stating the reason for vaccine administration at a non-designated site and the means for ensuring that appropriate temperatures are maintained and documented during transit of the vaccine. If a physician chooses to administer yellow fever vaccine at a non-designated site more than twice in a 12-month period, an application for permission to administer the vaccine at that site shall be filed with the division. The physician to whom the yellow fever vaccination stamp has been issued is not authorized to administer yellow fever vaccine on board ship or aircraft.]

[(f) Physician record keeping. The physician to whom the yellow fever stamp is issued is responsible for maintaining the following information:]

[(1) name, address, birthdate, sex, race, and occupation of the vaccine recipient;]

[(2) reason for vaccinating the vaccine recipient;]

[(3) destinations of the vaccine recipient;]

[(4) time, date, and address of vaccine administration; and]

[(5) lot number and expiration date of the vaccine.]

(7) [(g)] Charges for the Uniform Stamp [stamp].

(A) New Applicant Fee. Each new applicant is required to submit a fee of \$68 by personal check, cashier's check, or money order along with the completed application. If the branch denies the application, the branch will return the \$68 to the physician.

(B) Annual Renewal Fee. In January of each year, each physician holding a Uniform Stamp is required to pay an annual fee of \$38. The physician shall submit the \$38 by personal check, cashier's check, or money order to the branch with the agency's Annual Renewal Form. If the branch denies the renewal, the branch will return the \$38 to the physician.

(C) Stamp Replacement Fee. A fee of \$50 will be required for issuing replacement Uniform Stamps in the event the original is lost or stolen.

(D) All fees will be waived for public health departments, public health districts, and public health regions.

[(1) In January of each year, each physician is required to pay an annual charge of \$25 to cover the cost to the department in issuing and renewing stamps. The physician shall submit the \$25 by personal check, cashier's check, or money order to the division with the application form. If the division denies the application, the division will return the \$25 to the physician.]

[(2) The \$25 charge will be waived for public health departments, public health districts, and public health regions.]

[(h) Non-assignability of stamps. A physician may not assign, loan, or give the stamp to another person.]

[(i) Loss or theft of stamps. A physician shall report immediately to the division any loss or theft of the stamp.]

[(j) Annual report. In January of each year, a physician shall report to the division the number of doses of yellow fever vaccine administered during the preceding year. Reporting forms are available from the division.]

[(k) Local health requirements. Local health departments and public health districts may choose to require additional measures for yellow fever vaccinations occurring within their jurisdictions.]

§97.154. Criteria for Operating as a Vaccination Center.

Designation as a vaccination center is made upon completion and approval of an application.

(1) A physician shall use the Uniform Stamp only at the vaccination center where the yellow fever vaccine is delivered and the vaccine may not be redistributed. The physician to whom the Uniform Stamp has been issued is not authorized to administer yellow fever vaccine on board ship or aircraft.

(2) Physicians shall administer and store yellow fever vaccine in accordance with the vaccine manufacturers' recommendations for safe and effective use of yellow fever vaccine.

(3) Annual report. Each physician holding a Uniform Stamp shall establish the need for continuing possession of the Uniform Stamp by completing and returning an annual renewal form along with the annual renewal fee. The annual renewal form is available from the Branch or on line at [www.immunizetexas.org](http://www.immunizetexas.org).

(A) If the annual renewal form is not received by the Branch within the timeframe stated on the form, designation as an authorized vaccination center may be removed and the physician will be required to return their Uniform Stamp.

(B) If the physician no longer wishes to retain their Uniform Stamp, the stamp must be returned to the Branch.

(4) Local health requirements. Local health departments and public health districts may choose to require additional measures for yellow fever vaccinations occurring within their jurisdictions.

§97.155. *Format of the Uniform Stamp [Yellow Fever Vaccination Stamp].*

The format of the Uniform Stamps [yellow fever vaccination stamps] will be according to federal guidelines Division of Quarantine Circular No. 106, which is adopted by reference in §97.153 of this title (relating to Criteria for Issuing Uniform [Yellow Fever] Stamps to Physicians.)

§97.156. *Denial, Suspension, or Revocation of Stamp.*

(a) The branch [division] may deny an application for a stamp or suspend or revoke an existing stamp or not renew a stamp if the applicant or holder fails to comply with the requirements of these sections. The applicant or holder has the opportunity to request a hearing on any of these actions in accordance with department fair hearing rules, §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(b) The branch [department] will not suspend or revoke a stamp without a prior hearing, except if the branch [division] determines that immediate suspension or revocation is necessary because of imminent threat to public health. ~~[; the division may suspend or revoke the stamp and offer the holder the opportunity for a post-action hearing.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Linda Wiegman

Deputy General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

##### SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

###### 28 TAC §7.18

The Texas Department of Insurance proposes amendments to §7.18, concerning Statements of Statutory Accounting Principles (SSAPs) that provide guidance to insurers and health maintenance organizations, including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. SSAPs provide a nationwide standard method of accounting, which most insurers and health maintenance organizations (HMOs) are required to use for statutory financial reporting guidance,

thus providing a more consistent reporting of financial information for insurers. However, SSAPs do not preempt individual state legislative or regulatory authority. SSAPs are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance process, which involves preparation of the SSAPs, exposure to public comment, and adoption by the NAIC. The Accounting Practices and Procedures Manual (Manual), published by the NAIC, is a comprehensive guide to statutory accounting principles and includes the SSAPs that have been adopted by the NAIC. SSAPs provide the source of statutory accounting principles for the Department when examining and analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and HMOs licensed in Texas, except where otherwise provided by law. The proposed amendments are necessary to adopt by reference the March 2007 version of the Manual with the exceptions specified in §7.18, and to delete paragraphs (1) and (7) in subsection (c) because they will become obsolete with the adoption of the March 2007 version of the Manual. The March 2007 version of the Manual adds three new SSAPs to the March 2006 version of the Manual: SSAP Nos. 94, 95 and 96. SSAP No. 94 establishes statutory accounting principles for transferable state tax credits. SSAP No. 95 replaces SSAP No. 28 and SSAP No. 90, paragraphs 18 - 20, and establishes updated statutory accounting principles for exchanges of nonmonetary assets. SSAP No. 96 establishes updated statutory accounting principles for settlement requirements for intercompany transactions. The proposed amendments to §7.18 are necessary to include new paragraph (1) in subsection (c) to provide an exception to new SSAP No. 96 in that though settlement requirements for intercompany transactions are subject to the accounting treatment in SSAP No. 96, the amounts owed to the reporting entity must be settled by the due date in accordance with the written agreement and intercompany balances must not exceed 90 days; otherwise, such balances shall be nonadmitted. SSAP No. 96 specifies a 90-day settlement period from the written agreement due date. The Manual also contains nonsubstantive modifications to SSAP Nos. 1, 3, 26, 30, 32, 43, 55, 59, 61, 62, 68, 72, and 88, which clarify language or change reference material. The proposed amendments to §7.18 also are necessary to implement HB 1590 enacted by the 80th Legislature, Regular Session, which amended the Insurance Code Chapter 425 by adding Insurance Code §425.071, effective June 1, 2007. HB 1590 authorizes the minimum standard of valuation under Subchapter B of Chapter 425 to include the use of lapse rates in the calculation of reserves for a secondary guarantee in universal life contracts issued after December 31, 2006. Actuarial Guideline No. 38 (AG 38) in the Manual reflects the NAIC's recently adopted recommended changes to the minimum standard of valuation that allow the use of lapse rates in the calculation of these reserves. The proposed amendments to §7.18, which adopt the Manual by reference, will adopt AG 38 in its entirety, including item 8C which specifically provides for the use of lapse rates in the calculation of reserves for a secondary guarantee in universal life contracts issued on or after January 1, 2007, and on or prior to December 31, 2010. The proposed amendments to §7.18 supplement the reserve requirements in Subchapter EE of this title (Relating to Valuation of Life Insurance Policies) for universal life policies. The proposed amendments to §7.18 also update several Texas Insurance Code references due to the enactment of the nonsubstantive Insurance Code revision by the Legislature, correct internal references, and make minor grammatical corrections.

Danny Saenz, Acting Associate Commissioner, Financial Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of these amendments, and there will be no effect on local employment or the local economy.

Mr. Saenz has also determined that for each year of the first five years the amended section is in effect, the public benefit will be the more efficient regulation of insurance and a decrease in costs to insurers that are currently required to file multiple financial statements in multiple states. The adoption of the March 2007 Manual will provide a more consistent regulatory environment and will provide a single source for accounting guidance. The March 2007 Manual is available from the NAIC at a cost of \$465 for a soft cover manual or \$395 for a CD-ROM. The cost to comply with the provisions of the Manual will vary from insurer to insurer. Since the Manual was first adopted on January 1, 2001, most of the costs of programming and training have been incurred. Based upon the Department's experience, each insurer will have to ensure that at least one employee familiar with the insurer's accounting practices is instructed in the provisions of the Manual and has responsibility for monitoring changes in the Manual. This instruction can be accomplished through self-study, attendance at a seminar, or a combination of the two methods. The NAIC offers a self-study course at a cost of \$175 per copy. The NAIC offers instruction on the Manual through webinar courses at a cost of \$100 per attendee per course. Classroom course seminars that offer instruction on the Manual cost approximately \$645 per attendee for a one-day course and \$795 per attendee for a two-day course. The number of employees sent to training is largely dependent on the size and expertise of the insurer's accounting staff but is not dependent on the overall size of the insurer. As the size of the accounting staff increases, the likelihood increases that the insurer will choose to send more than one employee to a seminar for training. The Department estimates that companies with five or fewer accounting employees will either require the use of self-study training or send one employee to a seminar. Those companies with six to 10 employees on the accounting staff will likely send one to three employees to seminars for instruction and supplement that training with self-study materials. Those companies with 11 or more employees on the accounting staff will likely send three or more employees to seminars and supplement with self-study materials. Each employee is estimated to be compensated at a rate of \$17 to \$30 an hour. These estimates are based upon the Department's discussions with industry representatives. Changes in the Manual may also require changes to an insurer's electronic accounting system. The cost of changes to accounting systems is dependent on the insurer's line of insurance, the complexity of the insurer's transactions, and whether the system is proprietary or created by third-party vendors. Costs due to system changes increase with the complexity of transactions and the percentage of proprietary computer code in the system. In the Department's experience, small companies do not usually rely upon internally created proprietary systems and do not generally enter complex transactions on a regular basis. Large companies are more likely to have an internally created proprietary system and enter into complex transactions. Accordingly, system change costs, when necessary, will be greater for large companies. Based on the cost of labor per hour, the Department believes the cost of compliance with the proposal will be less for small and micro businesses than the largest businesses. Even so, the Department has considered the purpose of the proposed amendments and applicable statutes, which is the mandated use by regulated entities of

certain accounting standards in completing financial statements filed with the Department to assist in uniform, effective and cost efficient financial regulation of the regulated entities, and has determined that certain small insurers should be exempt from compliance with the proposed amendments. These insurers, which are specified in §7.18(d), include farm mutual insurance companies, statewide mutual assessment companies, local mutual aid associations, and mutual burial associations with less than \$5 million in annual direct premiums. The Department has determined that these exemptions are necessary because these companies are small and have traditionally accounted for their business on a cash basis. The Department, however, has determined that it is not feasible or necessary to waive or modify the provisions of the proposed amendments for any other small or micro businesses. Regardless of the fiscal effect of compliance, the underlying statutes require the adoption of accounting standards to be used by regulated entities in completing financial statements filed with the Department. The accounting standards of this proposal are similar in nature to the accounting requirements used in other states. The adoption of this proposal will subject regulated entities licensed in other states to uniform accounting requirements among the various states. Any additional costs for compliance result from the enactment of Insurance Code §425.071 and are not the result of the adoption, enforcement, or administration of the amended section.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a taking impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 4, 2007. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Acting Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Insurance Code Chapters 32, 36, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862. Section 401.051 and §401.056 (formerly Article 1.15 §1 and §6) mandate that the Department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) (formerly Article 1.32 §3) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) (formerly Article 21.39) authorizes the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 (formerly Article 3.33 §9) authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425 Subchapter C. Section 426.002 (formerly Article 5.61(a)) provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Com-



missioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 (formerly Article 21.28-A §1) authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 and §802.001 authorize the Commissioner to furnish required financial statement forms. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Sections 841.004(b), 861.255(b) and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.

*§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.*

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, [independent accountants, industry accountants, and the department's analysts and examiners] guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2007 [2005] version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC) will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. Furthermore, §§3.1501 - 3.1505, 3.1605, 3.1606, 3.7004, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables, General Requirements, Statement of Actuarial Opinion Based on an Asset Adequacy Analysis [Required Opinions], Contract Reserves, Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness, Audited Financial Reports, and Investments, Loans, and Other Assets), preempt any contrary provisions in the Manual.[:]

- (1) Texas statutes;
- (2) department rules;
- (3) directives, instructions, and orders of the Commissioner;
- (4) the Manual;
- (5) other NAIC handbooks, manuals, and instructions, adopted by the department; and
- (6) Generally Accepted Accounting Practices.

(b) The Commissioner adopts by reference the March 2007 [2005] version of the Manual, with the exceptions and additions set

forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2007 [2006] and thereafter, and also shall be used to prepare all financial statements filed with the department for periods after January 1, 2007 [2006].

(c) The Commissioner adopts the following exceptions and additions to the Manual:

(1) Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 96, except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall not exceed 90 days; otherwise such balances shall be nonadmitted. [In addition to the statements of statutory accounting principles in the Manual, Statement of Statutory Accounting Principles (SSAP) No. 90 regarding accounting for the impairment or disposal of real estate investments and SSAP No. 93 regarding accounting for low income housing tax credit property investments adopted by the NAIC on June 13, 2005 and effective January 1, 2006, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2006. This adoption of SSAP Nos. 90 and 93 effectively replaces SSAP No. 40, paragraphs 9, 10 and 19 and SSAP No. 48, paragraph 1.]

(2) Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(3) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(4) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(5) Goodwill, as reported on a regulated entity's statutory financial statements as of December 31, 2000, and any additional goodwill acquired thereafter, beginning January 1, 2001, shall be admitted as an asset and accounted for as permitted by SSAP Nos. 61 and 68. All other amounts of goodwill, including, but not limited to, such amounts that may have been previously expensed, shall not be allowed as an admitted asset. However, notwithstanding the provisions of SSAP Nos. 61 and 68, all methods of non-insurer subsidiary and affiliate valuation permitted by Insurance Code §§823.301 - 823.307 may be used for the purposes of goodwill calculation.

(6) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

[(7) Reserves for life insurance policies within the scope of Actuarial Guideline No. 38 (AG 38) shall be determined in accordance with subparagraphs (A) - (D) of this paragraph.]

[(A) Policies issued on or after July 1, 2005. The assumptions used in AG 38, item 8, steps 3 and 4 are allowed to be inconsistent only up to an assumed 7% premium load which may be used in item 8, step 4.]

[(B) Policies issued before July 1, 2005. An insurer must be able to demonstrate reserve adequacy based on an asset adequacy analysis.]

[(C) Assumptions. Assumptions used in AG 38, item 8, must be reasonable and consistent between steps 3 and 4 of item 8, except for the allowance provided in subparagraph (A) of this paragraph. Assumptions include any factor or value, whether assumed or known.]

[(D) Application. Assumptions and methods used in AG 38 must reasonably measure the actual level of prefunding to establish reserves required by Insurance Code Article 3.28, Subchapter EE of this title (relating to Valuation of Life Policies); AG38 and this subparagraph.]

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than \$5 million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice. Such filing shall be made with the Associate Commissioner [Associate Chief Examiner], Texas Department of Insurance, Mail Code 305-2A [305-2E], P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703163

Brenda Caldwell

Assistant General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## TITLE 34. PUBLIC FINANCE

### PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

## CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

### 34 TAC §101.6

The Texas County and District Retirement System (system) proposes an amendment to §101.6, concerning the selection of an effective retirement date. The proposed amendment is intended to bring the rule in conformity with HB 1587, as enacted into law by the 80th Legislature. That law ensures that a retirement from a newly participating subdivision cannot occur prior to the first anniversary of the subdivision's date of participation in the system. Earlier law permitted retirements to occur if the applicant had been a member in the system for at least one year. The proposed amendment also incorporates the convention established by HB 1587 that, except for eligibility, service retirements and disability retirements are equivalent under the system and will be distinguished only in situations where there is a statutory difference.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed amended rule is in effect, the public benefit anticipated as a result of administering the rule will be the assurance that a newly participating subdivision will have a sufficient period of contributions to accumulate adequate reserves to meet its initial benefit obligations. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.102, which authorizes the board of trustees to adopt rules necessary or desirable for the efficient administration of the system.

The Government Code, §844.003, is affected by this proposed rule.

#### *§101.6. Time for Filing of Retirement Applications.*

(a) All applications for retirement[; ~~whether for service or for disability;~~] must be executed on or before the date specified by the member as the effective date of the member's retirement and except as provided in subsection (e) all applications for retirement must be filed on or before the date specified as the effective retirement date.

(b) The date specified as the effective date for retirement must be the last day of a calendar month and may not precede the first anniversary of the [earlier of the effective date of the person's membership in the retirement system or the] effective date of participation of the subdivision [from which the member had most recently earned credited service].

(c) A member must have terminated from employment on or before the effective retirement date designated on the application. If the member is applying for: [The date specified as the effective date of retirement may not be a date preceding the termination of the member's employment with all participating subdivisions except as permitted by §844.003(d) of the Act.]

(1) service retirement, the date specified as the effective date of retirement with respect to a subdivision may not be a date preceding the termination of the member's employment with the subdivision from which the member wishes to retire.

(2) disability retirement, the date specified as the effective date of retirement may not be a date preceding the termination of the member's employment with all participating subdivisions.

(d) Although the system will recognize a retirement application filed on or before the effective retirement date designated on the application as having been timely filed with respect to that designated retirement date, this section shall not be construed to require a subdivision to process, by the end of the month, a retirement application submitted to it at any time during the month. A subdivision may establish reasonable administrative rules and procedures, including submission schedules, for the monthly processing of retirement applications for filing with the system.

(e) If, on a [an application for service] retirement application, a member specifies an effective retirement date after November 30, 2002, and that application is received by the system after the specified retirement date, the director may, on his own motion or on good cause shown in a petition filed with the system, deem the application to have been filed on the last day of a month ending prior to the date it was received by the system provided all other requirements set forth in this rule have been met. In no event may a deemed filing date be earlier than the effective retirement date specified on the application or the last day of the second calendar month immediately preceding the date the application was received by the system. The effective retirement date with respect to an application that is filed under this subsection is the deemed filing date. A petition filed under this subsection must fully state the facts and circumstances that show that the member has complied with all other filing requirements under this rule and that the failure to timely file the application with the system was not due to the neglect, indifference or lack of diligence of the member, must state the relief requested, and must be certified as true and correct. The system shall adjust benefits and make retroactive payments as appropriate to correctly reflect the [service] retirement annuity that is payable to the member based on the effective retirement date determined under this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703154

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



## CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

### 34 TAC §103.2

The Texas County and District Retirement System (system) proposes an amendment to §103.2, concerning the optional retirement annuities that a retiree may select in lieu of a standard retirement annuity. The proposed amendment is intended to bring the rule in conformity with HB 1587, as enacted into law by the

80th Legislature. That law removes from the TCDRS Act, an exclusive listing of those optional retirement annuity forms that a retiree could select in lieu of a standard retirement annuity and authorizes the board of trustees to provide for additional optional annuity forms by administrative rule. Under this authority, the board is restating those optional forms currently listed by statute, except for the five-year certain and life annuity form which is repealed effective January 1, 2008.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the adopted amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the adopted amended rule is in effect, the public benefit anticipated as a result of administering the rule will be the earlier availability of optional annuity forms that better serve the interests of the members and their beneficiaries, as well as the earlier removal of those optional forms of payment that have frequently proven to be a disservice to those interests. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.0041, as amended by the 80th Legislature, which authorizes the board of trustees to provide by rule for additional forms of optional retirement annuities.

The Government Code, §844.0041, as amended by HB 1587 is affected by this proposed rule.

#### §103.2. Additional Optional Retirement Annuities[Benefits].

(a) A member entitled to retirement may elect to receive, in lieu of a standard retirement benefit, one of the following optional annuities [benefits], each of which is a reduced monthly annuity that is the actuarial equivalent of the standard retirement benefit, payable during the lifetime of the retiree, but with the provision that:

(1) [~~Option 1:~~ ] after the retiree's death, the reduced annuity is payable throughout the life of an individual [a person] designated by the retiree;

(2) [~~Option 2:~~ ] after the retiree's death, three-fourths [~~one-half~~] of the reduced annuity is payable throughout the life of an individual [a person] designated by the retiree;

(3) after the retiree's death, one-half of the reduced annuity is payable throughout the life of an individual designated by the retiree [~~Option 3: if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;~~];

{~~(4) Option 4: if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;~~}

(4) [~~(5) ]~~ [~~Option 5:~~] after the retiree's death, the reduced annuity is payable throughout the life of an individual [a person] designated by the retiree, except that if the designated individual [person] predeceases the retiree, the annuity payable throughout the remaining

life of the retiree is the annuity that would be payable if the retiree had originally chosen a standard retirement annuity;

(5) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

{(6) Option 6: after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of a person designated by the retiree;}

(6) [(7)] [Option 7:] if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(b) If payments under a standard or optional retirement annuity [benefit] cease before the sum of all such payments equals or exceeds the amount of accumulated contributions in the individual account in the employees saving fund at the time of retirement of the member on whose service the annuity was based, a lump-sum benefit equal to the amount by which the accumulated contributions exceed the sum of all such payments made under the annuity is payable in the manner described in Government Code §844.402.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



### 34 TAC §103.5

The Texas County and District Retirement System (system) proposes an amendment to §103.5, concerning the benefit distribution requirements for qualified plans as mandated by federal law. The proposed amendment sets forth the requirements for benefit distributions that apply when the member has attained the later of age 70 1/2 or separates from service, when the member has died prior to retirement, and when the member has died after retirement. The proposed amendment deletes surplus and obsolete language that was relevant in the past when membership in the system would terminate because of absence from service. As changed by the 79th Legislature, membership in the system no longer terminates as a result of absence from service. Other language is modified to address the distribution implications when a member's cumulative service also includes active or inactive service in the proportionate retirement program.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the proposed amended rule will be the operation of the system in accordance with the requirements of federal law applicable to all qualified plans. There will be no

costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §841.010, which authorizes the board of trustees to adopt rules for the distribution of benefits to ensure compliance with federal statutes and regulations.

The Government Code, §841.010, is affected by this proposed rule.

#### §103.5. Benefit Distribution Requirements.

(a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Proportionate retirement system--A public retirement system other than the Texas County and District Retirement System that participates in the Proportionate Retirement Program.

(2) Required distribution date--March 31 of the year following the later of the year in which the member separates from service or the year in which the member attains age 70 and one-half.

{(3) Rule-year--A year of service credited in participating subdivisions that have adopted a rule providing for retirement eligibility when the addition of a member's years of service and years of attained age produces a sum equal to or in excess of a specific number.}

(3) [(4)] Separates from service--The termination of employment with a subdivision participating in the Texas County and District Retirement System ('TCDRS').

(b) General Rules:

(1) A member who has separated from service with a [all] participating subdivision [subdivisions] may receive a refund of the accumulated contributions in the member's individual account with respect to that subdivision at any time after [following] separation from service and before retirement from that subdivision [that is prior to the member's required distribution date].

(2) A member must receive a refund of the accumulated contributions in the member's individual accounts [account] or retire from the TCDRS [System] on or before the member's [his/her] required distribution date.

(3) The remaining interest of a deceased retiree's benefit must continue to be distributed as rapidly as the method of distribution being used before the retiree's death.

(4) The entire interest that becomes payable because of the death of a member who has a designated beneficiary as defined in regulations to § 401(a)(9) of the Internal Revenue Code must be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary. A distribution under this provision after December 31, 1995, must:

(A) begin not later than the last day of the calendar year following the calendar year in which the member died, if payable to a person other than the decedent's spouse; or

(B) begin not later than the last day of the calendar year following the year in which the member died or the last day of the calendar year in which the decedent would have attained the age of 70

and one-half, if payable to the surviving spouse, unless the surviving spouse dies before payments begin, in which case the beginning of payments may not be deferred beyond the last day of the calendar year following the calendar year in which the surviving spouse dies.

(5) The entire interest that becomes payable because of the death of a member who does not have a designated beneficiary must be distributed within five years of the death of the member.

(6) For a distribution made by the retirement system after December 31, 2001, the system shall apply the minimum distribution requirements of § 401(a)(9) of the Internal Revenue Code of 1986 in accordance with the regulations under that section[that were proposed on January 17, 2001, notwithstanding any other provision of law to the contrary. This provision expires on the effective date of final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986 or on another date specified in guidance published by the Internal Revenue Service].

(c) Application:

(1) A member who is eligible to retire from the TCDRS, with or without combining the member's credited service with a proportionate retirement system, [on the basis of credited service in this System alone] must receive a refund of the accumulated contributions in the member's individual account or retire on or before the member's required distribution date without regard to whether that member is actively participating [an active participant] in a proportionate retirement system [or has credited service in a proportionate retirement system].

(2) A member [ whose total credited service in this System and all proportionate retirement systems equals less than four years;] who is not actively participating in the TCDRS or a proportionate retirement system, and who is not eligible to retire from the TCDRS [under this System] on the member's required distribution date must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date.

[(3) A member who has less than four rule-years of credited service; who has no credited service in a proportionate retirement system; and who is not otherwise eligible to retire at the member's required distribution date, must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date.]

[(4) A member who has four or more rule-years of credited service in this System; who has no credited service with a proportionate retirement system and who is not otherwise eligible to retire at the member's required distribution date, must receive a refund of the accumulated contributions in the member's individual account on the member's required distribution date; or must retire with an actuarially reduced annuity on the member's required distribution date. The annuity under this provision is adjusted because of the early commencement of the benefit and is actuarially equivalent to the annuity that would otherwise be payable commencing at the member's retirement eligibility date.]

[(5) The required distribution date for an inactive member of this System who has attained age 70 and one-half and who continues to actively participate in a proportionate retirement system is March 31 of the year following the year in which the member becomes eligible to retire on the basis of credited service in this System alone.]

[(6) A monthly annuity payable because of the death of a member that would extend beyond the life expectancy of the designated beneficiary, or that would extend beyond five years from the date of death of the member if payable to other than a designated beneficiary; will be converted to a monthly annuity having an equivalent present value that is calculated using a 7.0% interest rate and payable over the

life expectancy of the designated beneficiary or calculated using a 7.0% interest rate and payable over a 60 month period if payable to other than a designated beneficiary.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



## CHAPTER 105. CREDITABLE SERVICE

### 34 TAC §105.1

The Texas County and District Retirement System (system) proposes an amendment to §105.1, concerning the participation and credited service of a member performing covered service for two or more participating subdivisions during the same calendar month. The proposed amendment deletes surplus and obsolete language that was relevant in the past when membership in the system was based on the minimum level of service performed for participating subdivisions. As changed by the 79th Legislature, except for employees determined by the subdivision to be temporary, all employees of a participating subdivision are now eligible for membership. The proposed amendment sets forth the rules for determining retirement eligibility with respect to the concurrently employing subdivisions, separately and simultaneously, and the interaction with the prohibition against dual crediting and counting of service.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed amended rule is in effect, the public benefit anticipated as a result of administering the rule will be the notice to interested parties of the manner in which benefits will accrue and retirement eligibility calculated for those members concurrently employed by two or more subdivisions. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.102, which directs the board of trustees to adopt rules necessary or desirable for the efficient administration of the system.

The Government Code, §843.401, is affected by this proposed rule.

§105.1. *Persons Employed by Multiple Subdivisions.*

(a) Any person who is concurrently employed by two or more participating subdivisions shall be considered a covered employee of each [ if that person's combined service with those subdivisions, if performed for a single employing subdivision, would constitute that person an employee as that term is defined in the Texas Government Code, Title 8, Subtitle F].

(b) Each employee-member shall make monthly employee contributions [~~current-service deposits~~] at the rate specified in the participation order of the particular employing subdivision upon all compensation paid that person by such employer[; but excluding any amount paid by such subdivision in excess of the sum which is that proportion of the "maximum earnings" prescribed for such period by the governing body of such subdivision, which the compensation paid such employee by such subdivision bears to the total compensation paid that person by all participating subdivisions for the period involved]. Each employing subdivision shall withhold the employee contributions [~~current service deposits~~] required on account of the compensation paid such employee by such subdivision.

(c) The employee-member may receive only one month of credited service for any calendar month in which covered service was performed for two or more participating subdivisions. When determining an employee-member's retirement eligibility with respect to an employing subdivision, the credited service for a calendar month in which the employee-member was also performing covered service for another participating subdivision shall be counted as credited service performed for the employing subdivision for which retirement eligibility is being determined. When determining the retirement eligibility of an employee-member with respect to both subdivisions simultaneously, credited service is subject to the general rules of the system for recognizing and combining service among the several subdivisions but in no event may credited service for any calendar month be counted twice. [Credit shall similarly be allowed for prior service performed on a part-time basis for two or more participating subdivisions during the same calendar periods. The maximum prior-service credit allowed to the member on account of such service shall not exceed the maximum which the person would have been granted had the entire service been performed for and the entire compensation paid by one of the participating subdivisions. The maximum prior-service credit so computed shall be apportioned between and charged to the several employing participating subdivisions in the proportion which the compensation paid to such employee by the subdivision bears to the total compensation paid to the employee by all participating subdivisions for the same period. The maximum prior-service credit so apportioned to a particular subdivision shall be included in the total of maximum prior-service credits granted to all of its employee-members and shall be converted to an "allocated prior-service credit" of such subdivision as provided in the Texas Government Code, Title 8, Subtitle F.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703155

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



34 TAC §105.3, §105.4

The Texas County and District Retirement System proposes an amendment to §105.3, concerning optional credited service for qualified military service and §105.4, concerning credited service and optional contributions for qualified military service under the Uniformed Service Employment and Reemployment Rights Act ('USERRA'). These proposed amendments to the rules clarify the distinction between the two provisions for credited service, the limitations on the maximum credited service that can be received, the eligible member's rights under the USERRA to make optional deposits to the system to establish service credit with the subdivision, the manner in which those deposits can be made, and the treatment of the deposits as employee contributions. The proposed amendments also delete surplus and obsolete language that is no longer relevant.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed amended rules are in effect, the public benefit anticipated as a result of administering the rules will be the notice to interested parties of the manner in which service and benefits can be accrued and the increased flexibility in the manner that the optional contributions under the USERRA can be made to the system. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.102, which directs the board of trustees to adopt rules necessary or desirable for the efficient administration of the system.

The Government Code, §843.601, is affected by these proposed amendments.

*§105.3. Optional Credited Service for Active Duty Qualified Military Service.*

(a) In this section:

[(1)] The term "Act" means the Texas Government Code, Title 8, Subtitle F as amended. Unless otherwise indicated, all section numbers refer to sections of the Act.]

(1) [(2)] The term "credited service" means membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service established after December 31, 1999.

(2) [(3)] The term "eligible member" means a member of an eligible subdivision who has: credited service in the retirement system for at least the minimum period required to receive a service retirement annuity from the subdivision at age 60, who has performed active duty qualified military service; and who has been released from military duty under honorable conditions.

(3) [(4)] The term "eligible subdivision" means a subdivision whose governing board has adopted the optional authorization for the establishment of credited service in the retirement system for qualified military service[ under §843.601(e)].

(4) ~~[(5)]~~ The term "qualified military service" means active duty service in the uniformed services as defined in 38 U.S.C. § 4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the Act, and that service which is credited by another retirement system or program established or governed by state law. A member may not receive more than one month of credited service for any month.

(b) An eligible member may receive one month of credited service in the retirement system for each month of qualified military service performed while on active duty. Except as required under the USERRA, an~~An~~ eligible member may not accumulate more than a combined total of 60 months of credited service in the retirement system for qualified military service under this section~~[§843.601] and §105.4~~for membership credited service under §842.109(b)].

*§105.4. Credited Service Under The Uniformed Services Employment And Reemployment Rights Act.*

(a) An eligible member may receive credited~~current~~ service~~credit~~ for service in the uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 U.S.C. §4301 et seq.). Notwithstanding any provision to the contrary, the rights and benefits of an eligible member under the Texas County and District Retirement System (the System) shall not be less than those rights and benefits provided by the USERRA.

(b) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Eligible member--An employee of a participating subdivision who is or would be considered to be employed in a position eligible for membership but who leaves employment with that subdivision to perform service in the uniformed services; whose employer was notified of the obligation or intention of the employee to perform service in the uniformed services; who is released or discharged from such service on or after December 12, 1994 under honorable conditions; whose cumulative period of service in the uniformed services with respect to that participating subdivision does not exceed five years not including periods excluded under 38 U.S.C. §1412(c); who applies for reemployment with that participating subdivision within 90 days of release or discharge from the uniformed services, or after recovery from an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services (but such recovery period does not exceed two years); and who is reemployed by the participating subdivision.

(2) Uniformed services--The Armed Forces of the United States of America; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

(3) Service in the uniformed services--The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform such duty.

(4) Participating subdivision--A subdivision ~~[as defined in §841.001(14) of the Texas Government Code]~~ that is participating in the Texas County and District Retirement System at the time the eligible member leaves employment with the subdivision to perform service in the uniformed services; a subdivision that is not participating in

the System at the time the employee leaves employment with the subdivision to perform service in the uniformed services but commences participation during the period of the employee's performance of duty in a uniformed service; or a subdivision participating in the System that is a ~~[successive employer as described in §843.203 of the Texas Government Code or]~~ successor in interest to the participating subdivision from which the eligible member left employment to perform service in the uniformed services.

(c) Certification of Eligibility by Participating Subdivision. An eligible member will be credited with current service in accordance with the USERRA upon certification by the participating subdivision on forms provided by the System:

(1) that the eligible member's reemployment application is timely;

(2) that the eligible member has not exceeded the service limitations set forth in the USERRA;

(3) that the eligible member was not released or discharged from the uniformed service under other than honorable conditions;

(4) of the period in which the eligible member performed service in the uniformed services;

(5) that the eligible member did not receive service credit for the period of uniformed service;

(6) of the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services; and

(7) of the eligible member's date of reemployment.

(d) Credited~~Crediting of Current~~ Service and Optional Contributions under the USERRA.

(1) Provided the member has not received credited service for the same month under another provision of Texas Government Code, Title 8, an~~An~~ eligible member shall be credited with one month of current service credit for each month or part of a month in which both of the following occur:

(A) the eligible member performed service in the uniformed services, and

(B) the participating subdivision participated in the System.

(2) On or before the last day of the fifth calendar year following the year in which the eligible member was reemployed, the eligible member may, but is not required to, deposit with the System any or all employee contributions that would have been deposited to the member's individual account for each period during which the member performed service in the uniformed services if the eligible member had been employed with the participating subdivision during the period of uniformed service. Deposits under this provision are considered to be employee contributions made in the calendar year of deposit for purposes of employer matching and are subject to the following rules:

(A) The total deposits may not exceed the amount the eligible member would have been required to contribute had the eligible member remained continuously employed by the participating subdivision throughout the period of service in the uniformed services.

(B) The compensation upon which allowable deposits will be calculated is the estimated compensation that the eligible member would have received from the subdivision but for the period of service in the uniformed services.

(C) For purposes of determining the ~~months~~~~[amount]~~ of ~~credited~~~~[current]~~ service~~[ credit]~~ and allowable ~~deposits~~~~[monetary credit]~~, months of uniformed service and estimated compensation shall be calculated from the later of the date the eligible member entered uniformed service or the date the participating subdivision commenced participation in the System.

(D) Within the allowable period for making deposits and subject to the maximum total amount of deposits, an eligible member may make deposits at any time and in any amount.

(E) Deposits ~~may~~~~[must]~~ be paid directly to the System by the eligible member ~~or by the employer through payroll deduction.~~~~[, will be treated as after-tax contributions, and]~~ ~~Optional deposits made under this section are employee contributions and may not be returned until the member terminates from [all covered] employment with the participating employer~~~~[in this System].~~

(F) Deposits will be allocated prospective interest only, and in the same manner as interest is allocated on member contributions to individual accounts.

~~[(G) Deposits, when received by the System, shall be credited to the eligible person's individual account and shall be considered to be contributions attributable to the months of uniformed service performed beginning with the earliest month of uniformed service.]~~

~~[(H) For vesting and funding purposes, current service credit, and any monetary credit arising from voluntary deposits, shall be considered as having been earned through service with the reemploying subdivision, and as having been credited during the period of uniformed service.]~~

~~[(G) [(H)] An eligible member receiving credited service [ credit] under this section for a specific month may not receive credited service [ credit] for the same month under any other provision of the Texas Government Code, Title 8[, Subtitle F].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703150

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



## CHAPTER 107. MISCELLANEOUS RULES

### 34 TAC §107.9

The Texas County and District Retirement System (system) proposes an amendment to §107.9, concerning the electronic filing of documents. The amendment to the rule extends the deadline for the electronic filing of documents from 5:00 p.m. to midnight of the day of the deadline. As the system has extended its working hours within various departments and by various employees, midnight will be a time that can be applied universally and consistently for all electronic filing purposes.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed amended rules

are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed amended rules are in effect, the public benefit anticipated as a result of administering the rule will be the universal and consistent treatment for documents filed electronically across all system departments. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.102, which directs the board of trustees to adopt rules necessary or desirable for the efficient administration of the system.

The Government Code, §845.116, is affected by the proposed amendment.

#### §107.9. *Electronic Filing of Documents.*

(a) In this section:

(1) The term "document" means any form, statement, affidavit, application or report (and related attachments) required to be completed by or on behalf of a principal and filed with the system.

(2) The term "electronically filed" means the filing of data transmitted to the retirement system by the communication of information by facsimile or in the form of digital electronic signals transformed by computer and stored in any medium.

(3) The term "principal" means the member, beneficiary, annuitant, or subdivision on whose behalf the document is electronically filed.

(b) All documents required to be filed with the system by or on behalf of a principal in accordance with these rules or the provisions of Subtitle F of Title 8 of the Texas Government Code may be electronically filed. A document requiring certification by a subdivision that is filed with the system shall be considered to have been certified by the subdivision. A document that has been properly completed by a principal (other than a subdivision) or authorized agent of the principal and that is electronically filed with the system shall be considered to have been certified by the principal if certifying language appears on the document.

(c) The retirement system, in its sole and exclusive discretion, may:

(1) accept an electronically transmitted document for filing, in which case the system will not provide notice of acceptance;

(2) conditionally accept an electronically transmitted document for filing provided that the original is received by the system within a time certain as indicated in a notice sent to the principal; or,

(3) decline to accept an electronically transmitted document for filing, in which case the system shall send notice to the principal that the electronically transmitted document has not been accepted.

(d) An electronically transmitted document is not received in the system offices until the earlier of the time its receipt is recorded by the system's computer or the time the electronically transmitted document is printed from the system's fax machine. An electronically transmitted document accepted for filing is considered to be filed at the time it is received. A filing deadline that falls on a Saturday, Sunday or legal



holiday will be extended to the next following business day. For purposes of meeting a filing deadline, an electronically transmitted document must be received by the system before midnight [5:00 p.m. on the day] of the filing deadline.

(e) It is solely the responsibility of the principal to ensure that the system has received an electronically transmitted document.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703152

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



### 34 TAC §107.12

The Texas County and District Retirement System proposes an amendment to §107.12, concerning the payment of benefits due on the death of an annuitant. Legislation passed by the 77th Legislature changed the TCDRS Act such that an annuity was payable through the month of death rather than through the month preceding the month of death. This had the effect of causing a final payment due the deceased annuitant to be made after the date of death. The decedent's file can not be closed until these payments are distributed. These final amounts generally represent one monthly payment, and frequently there is no surviving beneficiary or spouse, or a beneficiary or spouse can not be found to accept the final payment, and there will be no estate administration. In such cases, this rule will allow the system, after making diligent efforts to discover or locate a beneficiary or spouse and after determining that there will be no estate administration, to pay these modest amounts in trust to a relative of the decedent. The rule is broad enough to apply to situations where there have been payments outstanding or suspended but due the deceased annuitant (subject to the \$5000 ceiling), as well as to those instances in which a retiree group term life benefit becomes payable and a surviving beneficiary or spouse can not be located and there will be no estate administration. Surplus and obsolete language has also been removed from the rule.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the elimination of administrative costs and complexities to the system and the deceased annuitant's family in instances where the amounts are minor and the expenses of a more formal administration are not cost effective and are likely to merely delay the distribution of the benefit

to the decedent's family. Distribution of this minor benefit in trust to a relative of the decedent will allow immediate use by the family of the benefit and closure of the participant's file. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment to the rule is proposed under the Government Code, §845.505(i), which authorizes the board of trustees to provide by rule for management of claimed benefits.

The Government Code, §845.506, is affected by this proposed rule.

#### §107.12. *Payments Due or Suspended on Death of Annuitant.*

[(a)] Payments under an annuity that is suspended as a result of a retiree's reemployment prior to January 1, 2006, under Section 842.110, Government Code, are payable, if the retiree dies before making an application for distribution of the accumulated payments; to the surviving beneficiary that had been selected at the time of the retirement for which the annuity originally was being paid.]

(a) [(b)] Payments of an annuity that are due a deceased annuitant and have not been made, or have been made but are not negotiable after [negotiated on] the annuitant's [date of] death [of an annuitant] are payable to the valid surviving beneficiary of the annuitant on file with the retirement system [for the annuity] on the date of the annuitant's death. If there is no surviving beneficiary, the payments are payable to the annuitant's spouse. If there is no surviving spouse, the payments are payable to the executor or administrator of the annuitant's estate.

(b) If the total value of the payments described above is not more than \$5,000, and there is no surviving beneficiary or spouse (or diligent efforts by the system to discover, locate and correspond with a surviving beneficiary or spouse have proven fruitless); and no petition for the appointment of an administrator or executor is pending or has been granted; and a small estates affidavit has not been filed with the system; then upon application, the system may, but is not required to, issue payment (including any optional group term life benefit), in trust to a relative of the decedent who would have a right of inheritance assuming the decedent had died intestate without relatives of a closer degree.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703184

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD), adopts the amendments to Subchapter A, §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.17, and 3.19; Subchapter B, §§3.55, 3.71, 3.73, 3.81, 3.83, and 3.85; Subchapter D, §§3.2023; Subchapter E, §§3.2501, 3.2507, 3.2513, 3.2519, and 3.2525; Subchapter G, §§3.8210 and 3.8220 without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3429).

The CJD adopts new rule §3.2025 under Subchapter D without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3429). The addition of §3.2025 requires all grant applicants provide CJD with the contact information for their agency's civil rights liaison.

The CJD adopts the repeal of §3.2511 under Subchapter E without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3429). The repeal of §3.2511 removes information regarding the process of requesting grant funds and moves this information into §3.2507.

The amendment to §3.1 removes references to Subchapter C, which is being adopted as repealed.

The adopted amendment to §3.3(9) corrects a formatting error.

The adopted amendment to §3.3(13)(B) adds "DVD players" to the list of items considered to be equipment budget items.

The adopted amendment to §3.5(a)(6) changes the word "obtain" to "access" to clarify the manner in which grant applicants can apply.

The adopted amendment to §3.7: (1) clarifies the language relating to funding decisions; (2) expands on factors CJD takes into consideration during the grant funding selection process; (3) removes unnecessary language regarding funding allocations; (4) gives CJD the flexibility to notify applicants of funding decisions via the Internet or other means; and (5) removes an erroneous statement that has been moved to §3.9.

The adopted amendment to §3.9 includes a statement moved from the previous section regarding the finality of funding decisions.

The adopted amendment to §3.11 updates this section to reflect the new process of accepting grant awards through CJD's online grant management system.

The adopted amendment to §3.17: (1) renames this section from "Federal Funding" to "Grant Funding" in order to also be applicable to state funding; and (2) clarifies that grantees must com-

ply with both federal and state statutes, rules, regulations, and guidelines that may apply to their funding.

The adopted amendment to §3.19: (1) corrects a typographical error; (2) corrects the citation from the Code of Federal Regulations; and (3) corrects a second typographical error.

The adopted amendment to §3.55: (1) removes the statement of prohibition on serving adult offenders; and (2) adds a comprehensive list of prohibited costs and activities applying to all grants.

The adopted amendment to §3.71 clarifies language relating to the determination of eligible grant budget items.

The adopted amendment to §3.73 adds a statement requiring that grant applicants who include matching funds in the grant budget maintain that level of matching funds throughout the grant period.

The adopted amendment to §3.81 gives CJD the flexibility to notify applicants via the Internet of approved equipment items.

The adopted amendment to §3.83 removes the list of ineligible supplies and directs operating expenses because a complete list of ineligible costs and activities has been added to a previous section.

The adopted amendment to §3.85 clarifies the language of this section to make it easier to understand.

The adopted amendment to §3.2023 adds language requiring all grantees to submit information regarding their agency's fiscal capability in the grant application.

The adopted amendment to §3.2501: (1) removes the requirement for grant officials to provide CJD with a sample signature as a result of CJD's online grant management system; (2) removes the language requiring grantees to inform CJD of changes to the grant officials in writing; and (3) removes the requirement for new grant officials to provide CJD with a sample signature.

The adopted amendment to §3.2507 adds language to clarify the expenditure reporting process.

The adopted amendment to §3.2513 clarifies changes to the grant adjustment process as a result of CJD's online grant management system.

The adopted amendment to §3.2519 removes the words "in writing" from this section.

The adopted amendment to §3.2525 adds language requiring that grantees' monitoring program incorporates best practices.

The adopted amendment to §3.8210 adds language allowing the Governor to appoint the chairman of the Governor's Juvenile Justice Advisory Board.

The adopted amendment to §3.8220 allows the Governor to appoint individuals to advise the Governor's Juvenile Justice Advisory Board concerning specific juvenile justice matters.

No comments were received regarding adoption of the amendment, addition, and repeal of these rules.

## **SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS**

### **1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.17, 3.19**

The amendment of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment or addition of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2007.

TRD-200702999

Christopher Burnett

Assistant General Counsel

Office of the Governor

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Proposal publication date: June 15, 2007

For further information, please call: (512) 463-1919



## **SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES**

### **DIVISION 1. ELIGIBILITY REQUIREMENTS**

#### **1 TAC §3.55**

The amendment of this rule is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of the amended rule implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
Assistant General Counsel  
Office of the Governor

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For further information, please call: (512) 463-1919



## **DIVISION 2. GRANT BUDGET REQUIREMENTS**

### **1 TAC §§3.71, 3.73, 3.81, 3.83, 3.85**

The amendment of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2007.

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Christopher Burnett

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 463-1919



## **SUBCHAPTER D. CONDITIONS OF GRANT FUNDING**

### **1 TAC §3.2023, §3.2025**

The amendment and addition of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended and added rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment and addition of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
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Office of the Governor  
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For further information, please call: (512) 463-1919



## SUBCHAPTER E. ADMINISTERING GRANTS

### 1 TAC §3.2501, §3.2507

The amendment of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
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Office of the Governor  
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### 1 TAC §3.2511

The repeal of this rule is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adopted repeal implements the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted repeal of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
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Office of the Governor  
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For further information, please call: (512) 463-1919



### 1 TAC §§3.2513, 3.2519, 3.2525

The amendment of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. CRIMINAL JUSTICE DIVISION ADVISORY BOARDS DIVISION 2. GOVERNOR'S JUVENILE JUSTICE ADVISORY BOARD

### 1 TAC §3.8210, §3.8220

The amendment of these rules are adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The adoption of amended rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the adopted amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
Assistant General Counsel  
Office of the Governor  
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For further information, please call: (512) 463-1919



## SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

The Office of the Governor, Criminal Justice Division (CJD), adopts the repeal of Subchapter C, Division 1, §§3.101, 3.103, 3.105, and 3.111; Division 2, §§3.201, 3.203, 3.205, and 3.211; Division 3, §§3.301, 3.303, 3.305, 3.311, and 3.313; Division 4, §§3.401, 3.403, and 3.405; Division 5, §§3.501, 3.503, 3.505, 3.509, 3.511, and 3.513; Division 6, §§3.601, 3.603, 3.605, 3.609, 3.611, and 3.613; Division 7, §§3.701, 3.703, 3.705, 3.711, and 3.717; Division 9, §§3.901, 3.903, and 3.905; Division 11, §§3.1101, 3.1103, 3.1105, 3.1109, and 3.1111; Division 12, §§3.1201, 3.1203, 3.1205, 3.1209, 3.1211, and 3.1213; and Division 13, §§3.1301, 3.1303, 3.1305, 3.1309, and 3.1311, without changes to the proposal as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3435).

Subchapter C, "Fund-Specific Grant Policies" outlines specific eligibility and budget rules applicable to various funding sources administered by CJD. For federal fund sources, these rules and guidelines are available in the federal guidelines. Information on grant guidelines can be found on CJD's website.

No comments were received regarding adoption of the repeal of these rules.

## DIVISION 1. STATE CRIMINAL JUSTICE PLANNING (421) FUND

### 1 TAC §§3.101, 3.103, 3.105, 3.111

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Christopher Burnett  
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## DIVISION 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

### 1 TAC §§3.201, 3.203, 3.205, 3.211

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. TITLE V DELINQUENCY PREVENTION ACT FUND

### 1 TAC §§3.301, 3.303, 3.305, 3.311, 3.313

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### **DIVISION 4. SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT FUND**

##### **1 TAC §§3.401, 3.403, 3.405**

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### **DIVISION 5. VICTIMS OF CRIME ACT FUND**

##### **1 TAC §§3.501, 3.503, 3.505, 3.509, 3.511, 3.513**

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### **DIVISION 6. CRIME STOPPERS ASSISTANCE FUND**

##### **1 TAC §§3.601, 3.603, 3.605, 3.609, 3.611, 3.613**

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### **DIVISION 7. EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM**

##### **1 TAC §§3.701, 3.703, 3.705, 3.711, 3.717**

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Office of the Governor

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## DIVISION 9. S.T.O.P. VIOLENCE AGAINST WOMEN ACT FUND

### 1 TAC §§3.901, 3.903, 3.905

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

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## DIVISION 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANT PROGRAM

### 1 TAC §§3.1101, 3.1103, 3.1105, 3.1109, 3.1111

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

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## DIVISION 12. JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM

### 1 TAC §§3.1201, 3.1203, 3.1205, 3.1209, 3.1211, 3.1213

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Office of the Governor

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## DIVISION 13. COVERDELL FORENSIC SCIENCES PROGRAM

### 1 TAC §§3.1301, 3.1303, 3.1305, 3.1309, 3.1311

The repeal of these rules is adopted under the Texas Government Code, Title 7, §772.006(a)(10), which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.006(a), which requires CJD to award and administer state and federal grant programs, and to assist the Governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

##### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

###### 19 TAC §97.1004

*(Editor's note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1004 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 3, 2007, issue of the Texas Register.)*

The Texas Education Agency (TEA) adopts an amendment to §97.1004, concerning adequate yearly progress (AYP). The amendment is adopted with non-substantive, pagination changes to the figure adopted as rule but without changes to the proposed rule text published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3097). The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The amendment adopts applicable excerpts, Sections II-V, of the 2007 *Adequate Yearly Progress Guide*, dated June 2007.

Under the accountability provisions in the federal No Child Left Behind (NCLB) Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The amendment to 19 TAC §97.1004 updates the rule to adopt applicable excerpts, Sections II- V, of the 2007 *Adequate Yearly Progress Guide*, dated June 2007. These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2007, the U.S. Department of Education (USDE) approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2007 AYP Guide. Examples of approved changes include expiration of the May 23, 2006, flexibility agreement regarding evaluation and reporting of information about students displaced by Hurricanes Katrina and Rita; USDE's response to Texas' compliance with the Elementary and Secondary Education Act/NCLB Standards and Assessments Peer Review process; and final regulations regarding the inclusion of limited English proficient students in determining AYP.

In addition, subsection (d) has been modified to specify that the AYP guide adopted for the school years prior to 2007-2008 will remain in effect with respect to those school years.

No changes were made to the rule text since published as proposed, and the actual content of the guide excerpts adopted as rule has not changed. However, non-substantive, pagination corrections were made to the guide excerpts.

The public comment period on the proposal began June 8, 2007, and ended July 8, 2007. The following is a summary of the public comments received on 19 TAC §97.1004 and the corresponding agency response.

**Comment.** A comment was received from an administrator with the Houston Independent School District. The comment had three parts. First, appeals to remove students identified as displaced by Hurricanes Katrina and Rita (hereafter referred to as displaced students) from the denominator of the Class of 2006 Graduation Rate should be considered. Second, appeals to have prior-year Reading and Mathematics Performance rates recalculated to include displaced students for the purposes of recalculating performance improvement for safe harbor should be considered. Finally, appeals to recalculate Attendance Rate improvement for safe harbor to exclude the impact of displaced students should be considered.

**Agency Response.** The agency disagrees and will maintain language as proposed. According to page 2 of the agency's flexibility agreement with the U.S. Department of Education on May 23, 2006, regarding the inclusion of displaced students, "[I]n calculating attendance and graduation rates for 2006-07 AYP, Texas must include all students that were in the displaced student subgroup in 2005-06 in all appropriate subgroups." The agency takes the position that implementing the suggestions in the above comment would violate the flexibility agreement; therefore, the agency cannot consider appeals based on displaced students and the figure will be adopted as proposed. The complete May 23, 2006, flexibility agreement is available on the agency's website at <http://www.tea.state.tx.us/ayp/flexwaiver.pdf>.

The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.



The adopted amendment implements the Texas Education Code, §§7.055(b)(32), 39.073, and 39.075(a)(4).

*§97.1004. Adequate Yearly Progress.*

(a) In accordance with the federal No Child Left Behind Act and Texas Education Code, §§7.055(b)(32), 39.073, and 39.075, all public school campuses, school districts, and the state are evaluated for Adequate Yearly Progress (AYP). Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). The performance of a school district, campus, or the state is reported through indicators of AYP status established by the commissioner of education.

(b) The determination of AYP for school districts and charter schools in 2007 is based on specific criteria and calculations, which are described in excerpted sections of the 2007 AYP Guide provided in this subsection.

Figure:/fids/200703069-1.pdf

(c) The specific criteria and calculations used in AYP are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the AYP guide adopted for the school years prior to 2007-2008 remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## 19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3098) and will not be republished. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The amendment adopts applicable excerpts of the Performance-Based Monitoring Analysis System 2007 Manual, dated June 2007. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education In-

formation Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. Given the statewide application of the PBMAS and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual PBMAS Manual have been adopted since the first PBMAS Manual was developed in 2004-2005. The PBMAS evolves from year to year, and the intent is to annually update 19 TAC §97.1005 to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the current rule by adopting excerpted sections of the PBMAS 2007 Manual, dated June 2007. These excerpted sections describe the specific criteria and calculations used to assign 2007 PBMAS performance levels. The 2007 PBMAS includes several key changes from the 2006 system. A new graduation rate indicator is previewed in each of the four program areas. Performance levels will be assigned for the four Recommended High School Program/Distinguished Achievement Program indicators that have been Report Only for the last three years. The Career and Technology Education program area has been renamed Career and Technical Education (CTE). In addition, the Nontraditional Course indicators in the CTE program area are reported using a new list of nontraditional courses. The Highly Qualified Teachers indicator has been deleted from the No Child Left Behind program area. The required improvement component has been expanded to many more indicators, and science has been added as a subject area for which professional judgment special analysis is available on certain indicators. The Texas Assessment of Knowledge and Skills-Alternate (TAKS-Alt) has been added to the PBMAS participation indicators. Two indicators in the special education program area that evaluate placements in less restrictive environments (LRE) have changed. A performance level will be assigned to the 3-5 LRE indicator, and the age range for the 3-11 LRE indicator has changed to 6-11. Additional numerator controls have been added to the special education identification and representation indicators, and some of the performance level cut points for the representation indicators have been adjusted. The special education Statewide Assessment Exemption indicator has been suspended for 2007 and will be revised in 2008 to reflect new assessments for students with disabilities. Finally, additional specificity has been added to the 2007 PBMAS performance levels to designate required improvement and professional judgment special analysis. Changes to the PBMAS indicators for 2007 are marked in the manual as "New!" for easy reference.

The adopted amendment also amends language in subsection (a) to update the name of the career and technical education program. In addition, subsection (d) is modified to specify that the PBMAS manual adopted for the school years prior to 2007-2008 will remain in effect with respect to those school years.

No changes were made to the rule or manual excerpts adopted as rule since published as proposed.

The public comment period on the proposal began June 8, 2007, and ended July 8, 2007. No public comments were received.

The amendment is adopted under the Texas Education Code, §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The amendment implements the Texas Education Code, §7.028.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

#### 19 TAC §228.10

The State Board for Educator Certification (SBEC) adopts an amendment to §228.10, relating to requirements for educator preparation programs. The amendment is adopted without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1822) and will not be republished. The section addresses the approval process for requesting additional certificate fields. The adopted amendment updates the process for requesting additional certificate fields to ensure that educator preparation programs have the capacity to offer support, training, and quality coursework for candidates.

Texas Education Code (TEC), §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional educator preparation programs. The rule in 19 TAC §228.10, Approval Process, specifies the current process for approving new and continuing entities, adding certificate fields for fully accredited programs, and denying approval. The rule also specifies approval contingent on compliance with state and/or federal law and approval of other lawfully established governing bodies.

Section 228.10(c) establishes that programs fully accredited may request by "letter of intent" the addition of certificate fields within the classes of certificates for which they have been previously approved by the SBEC. The rule also currently states that the request must be approved by the executive director.

The current approval process in the rule is meant to save time; however, the process does not ensure that educator preparation programs have the staff and resources to adequately support the candidates in the additional certificate fields. Although most new program proposals only request one or few certificate fields, the practice has been to add other fields using the "letter of intent" process authorized in 19 TAC §228.10(c)(1). Research conducted by Educator Standards staff at the Texas Education Agency revealed that the 19 educator preparation pro-

grams rated "Accredited Preliminary Status" for the 2004-2005 school year have added 321 additional certificate fields. Eight of those programs added the certificate fields following SBEC board action taken on May 6, 2005, that allowed the executive director to grandfather educator preparation programs between January and March 2005 by way of letters of intent. Research also identified eight educator preparation programs that added 138 certificate fields contrary to the rule.

The adopted amendment to 19 TAC §228.10 modifies the current process for educator preparation programs to add certificate fields to allow for higher standards. The adopted amendment adds language to §228.10(c)(1) requiring that requests for additional certificate fields include a curriculum alignment matrix, as required in the initial proposal, and supporting documentation of staff expertise in the additional certificate field. Only educator preparation programs that have a current "Accredited" rating may submit requests for additional certificate fields. The "Accredited" rating is determined by the student pass rates on approved certificate area examinations as indicated by the annual accountability rating in the Accountability System for Educator Preparation (ASEP), codified in 19 TAC Chapter 229. The ASEP would include certificate fields under 19 TAC §229.4 beginning in Spring 2007.

Throughout 19 TAC §228.10, "executive director" was changed to "Texas Education Agency staff" to reflect the assignment of the SBEC's administrative functions and services to the Texas Education Agency in TEC, §21.035. Adopted new subsection (c)(3) was added to track that statutory assignment. In addition, House Bill 1116, 79th Texas Legislature, Regular Session, 2005, repealed TEC, §21.039, which established the SBEC executive director position. Other technical edits, such as changing "board" to "State Board for Educator Certification," were made for clarity.

No comments were received regarding adoption of the amendment.

The State Board of Education (SBOE) took no action on the review of the adopted amendment to 19 TAC §228.10 at the July 20, 2007, SBOE meeting.

The amendment is adopted under the TEC, §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; §21.044, which requires the SBEC to propose rules establishing the training requirements and minimum academic qualifications required for a certificate; §21.045(a), which requires the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; and §21.049, which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional educator preparation programs.

The adopted amendment implements TEC, §§21.031(a), 21.041(b)(1) and (2), 21.044, 21.045(a), and 21.049.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Raymond Glynn

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State Board for Educator Certification

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For further information, please call: (512) 475-1497



## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §233.12

The State Board for Educator Certification (SBEC) adopts an amendment to §233.12, relating to categories of classroom teaching certificates. The amendment is adopted without changes to the proposed text as published in the February 2, 2007, issue of the *Texas Register* (32 TexReg 435) and will not be republished. The section addresses career and technology education (certificates not requiring experience and preparation in skills areas). The adopted amendment establishes in permanent rule the new TExES-based Business Education: Grades 6 - 12 certificate.

Texas Education Code (TEC), §21.041(b)(2), authorizes the SBEC to specify in rule the classes of educator certificates to be issued. Section 233.12, Career and Technology Education (Certificates not requiring experience and preparation in skills areas), establishes educator certificates for areas of Career and Technology Education. Section 233.12 also addresses prerequisites for teachers assigned to Career Investigation and Career Connections courses.

In January 2004, the SBEC approved, but not in rule, new TExES-based classroom teaching certificates for Agricultural Science and Technology, Business Education, Dance, Journalism, Marketing Education, Speech, and Theatre. The SBEC also took action to adopt the educator standards for these new certificates.

In December 2004, the SBEC discussed amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, to establish the new certificates in rule, including the Business Education: Grades 6 - 12 certificate. In January 2005, the SBEC approved as proposed the amendments to include the new certificates in 19 TAC Chapter 233; however, due to a delay in the test development process, the Business Education: Grades 6 - 12 certificate was not included in the proposed rule changes. The TExES exam development was delayed due to stakeholder committee input to revise the test frameworks to ensure a quality exam.

Subsequent SBEC rule actions taken to adopt the new certificates were finalized in June 2006; however, the Business Education: Grades 6 - 12 certificate was not included because it was not a part of the original proposal.

In November 2006, staff presented an emergency amendment to establish the Business Education: Grades 6 - 12 certificate by rule together with an identical proposed amendment for permanent adoption. At that meeting, the SBEC approved a modified emergency amendment and requested that staff bring back a proposed amendment for permanent adoption that would specify a time frame by when holders of the Business Education: Grades

6 - 12 certificate would be required to attend and participate in a Texas Education Agency (TEA) sponsored Career and Technology Education Professional Development Conference.

At the January 2007 meeting, the SBEC approved for filing as proposed the amendment to 19 TAC §233.12 that would encourage and not require holders of the new business education certificate to attend and participate in a Career and Technology Education Professional Development Conference sponsored by the TEA during the first year of assignment. In January, the SBEC also approved an extension of the emergency effectiveness for an additional 60 days.

To address the issue of two separate standards for attending a professional development conference that existed in the emergency rule and in the adopted amendment to §233.12, the SBEC also took action at its January 2007 meeting to clarify that the adopted amendment to §233.12, as it relates to the professional development conference, would apply to individuals who obtain the Business Education: Grades 6 - 12 certificate under the emergency rule. Holders of the Business Education: Grades 6 - 12 certificate issued under the emergency rule would only be encouraged and not required to attend a TEA-sponsored career and technology education professional development conference.

The adopted amendment to 19 TAC §233.12, adds the Business Education: Grades 6 - 12 certificate by rule and specifies a date for issuance. The adopted amendment also includes language to encourage holders of the new business education certificate to attend and participate in a Career and Technology Education Professional Development Conference sponsored by the TEA during the first year of assignment. A technical change is made to update the section title.

No comments were received regarding adoption of the amendment.

The State Board of Education (SBOE) took no action on the review of the adopted amendment to 19 TAC §233.12 at the July 20, 2007, SBOE meeting.

The amendment is adopted under the TEC, §21.041(b)(2), which requires the SBEC by rule to specify the classes of certificates to be issued.

The adopted amendment implements the TEC, §21.041(b)(2).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703086

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Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

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For further information, please call: (512) 475-1497



## CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES INCLUDING

# ENFORCEMENT OF THE EDUCATOR'S CODE OF ETHICS

## SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

### 19 TAC §249.14

The State Board for Educator Certification (SBEC) adopts an amendment to §249.14, relating to enforcement actions and guidelines. The amendment is adopted with changes to the proposed text as published in the February 2, 2007, issue of the *Texas Register* (32 TexReg 436). The section addresses complaints, required reporting, investigations, and the agency's filing of petitions. The adopted amendment updates the rule to reflect statutory changes and adds clarification regarding an investigative notice that may be placed on an educator's certification records. The provisions for an investigative notice include assignment of priority levels based on the severity of allegations in the case.

Texas Education Code (TEC), §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. The rule in 19 TAC §249.14, Complaint, Required Reporting, and Investigation; Agency's Filing of Petition, specifies the current process to take complaints, requires reports of suspected misconduct, authorizes the investigation of certified educators, and allows the agency the ability to initiate contested case proceedings. As established in subsection (g), the rule provides staff with the ability to set priorities for its investigations based on the severity and immediacy of the allegation of misconduct as well as the likelihood of harm posed by the subject of the investigation.

The following adopted changes to 19 TAC §249.14 improve and enhance the disciplinary investigation process.

Subsection (d) is revised to clarify the definition of minor as a student or minor. Adopted new subsection (d)(2)(F) adds specificity regarding the types of acts used for determining the circumstances under which the superintendent must file a report with the Texas Education Agency (TEA) staff.

Subsection (g) is revised to create a two-tiered prioritization system. Adopted new subsections (g)(1) and (2) add specificity regarding the types of allegations and assign a prioritization status based on the nature and severity of the allegation. Adopted new subsection (g)(3) allows staff to change the prioritization based on information received after the investigation has been initiated and clarify that an investigative notice will not be created in response to allegations of a Priority 2 conduct. Adopted new subsection (g)(4) adds a definition for "serious testing violation."

Adopted new subsection (h) addresses placement of an investigative notice on the certificate holder's certification records based on the severity of the allegations in each case.

Adopted new subsection (i) establishes the opportunity and manner through which an educator may show cause why an investigative notice should not be placed on his or her certification records. This process includes the requirement that the certificate holder be notified of an investigation at least ten days before placing a notice on his or her certification records.

Adopted new subsection (j) establishes time limits for an investigative notice. Subsection (j)(1) tolls the running of the time limits while a criminal matter is pending. Subsection (j)(2) also defines criminal matter for purposes of subsection (j) and, in re-

sponse to public comment, provides that TEA staff will attempt to check the status of pending criminal investigations every two months to determine whether the criminal investigation has been closed or otherwise resolved. In addition, in response to public comment, subsection (j)(3) allows the time limit for an investigative notice to be tolled upon agreement of the parties.

Adopted new subsection (k) specifies the conditions for removal of an investigative notice.

Existing subsection (h), relating to filing a petition, is designated as new subsection (l) with technical edits made to the rule text.

New subsection (m) is added, in response to public comment, to define romantic relationship.

A technical edit changing the section title to reflect the addition of an investigative notice provision is made to 19 TAC §249.14.

Throughout 19 TAC §249.14, "executive director" was changed to "Texas Education Agency staff" to reflect the assignment of the SBEC's administrative functions and services to the TEA in TEC, §21.035. Adopted new subsection (m) is added to track that statutory assignment. In addition, House Bill 1116, 79th Texas Legislature, Regular Session, 2005, repealed TEC, §21.039, which established the SBEC executive director position.

Additional technical edits are made in §249.14 to define "board" as "State Board for Educator Certification." Also, references to "license/permit" remain as "permit" for consistency throughout Chapter 249.

Following the January 2007 SBEC meeting, notice of the proposed amendment was filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding adoption of the amendment.

Comment. The Texas State Teachers Association (TSTA) commented that §249.14(d)(2)(F) should be amended so that the superintendent of a school district would not be required to report to the SBEC when a certificate holder is terminated from employment based on a determination that the certificate holder solicited or engaged in a romantic relationship with a student or minor.

Response. The SBEC disagreed and took action to adopt the amendment, subject to State Board of Education (SBOE) review, as published as proposed. The solicitation of a romantic relationship is the type of serious misconduct that indicates the certificate holder is a danger to the health, safety, or welfare of the students and needs to be reported to the SBEC. The educator is in a position of authority in relation to the students by reason of age, experience, and education, while the students are in a vulnerable position relative to the educator by reason of youth and inexperience. The educator may also be responsible for assigning grades to the student, and may control the student's participation in extracurricular activities. Because of this power imbalance, the educator must maintain the appropriate boundaries with the student. When the educator violates these boundaries by soliciting a romantic relationship with the student, the educator has committed serious misconduct. Because this type of misconduct can seriously harm a student, the SBEC needs to know when such misconduct occurs in order to fulfill its responsibilities to protect the safety and welfare of Texas schoolchildren.

Comment. The TSTA commented that §249.14(g)(1)(L) should be amended so that the solicitation of romantic relationship would be removed from the class of offenses that would receive

an investigative notice under the procedures established in the rule.

**Response.** The SBEC disagreed and took action to adopt the amendment, subject to SBOE review, as published as proposed. As stated in the response to the previous comment, the SBEC considers the solicitation of a romantic relationship to be serious misconduct and a threat to the health, safety, or welfare of Texas schoolchildren, and that the investigative notice procedure should apply to this type of misconduct.

**Comment.** The Association of Texas Professional Educators (ATPE) commented that §249.14(j)(1) should be amended so that the duration of the placement of an investigative notice be limited to 180 days. The ATPE stated that 180 days would be a reasonable time limit to prevent disciplinary cases from languishing at the agency.

**Response.** The SBEC disagreed and took action to adopt the amendment, subject to SBOE review, as published as proposed.

**Comment.** The Texas Federation of Teachers (TFT) commented that §249.14(j)(1) should be amended to reduce the 240-day limit for placement of an investigative notice to 180 days.

**Response.** The SBEC disagreed and took action to adopt the amendment, subject to SBOE review, as published as proposed.

**Comment.** The TSTA commented that §249.14(j)(2) should be amended so that the time limits for the investigative notice will be tolled due to a pending criminal matter only when an indictment, issued by a grand jury, or an information, issued by a prosecutor, has been received.

**Response.** The SBEC disagreed. However, the SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The agency tolls the time limit for the investigative flag while a criminal investigation is pending in order to allow that process to reach its completion. The adopted amendment includes the modification of 19 TAC §249.14(j)(2) to clarify criminal matter by moving the definition of a criminal matter within subsection (j)(2). In addition, the adopted amendment also specifies a procedure to determine whether the criminal investigation has been closed or otherwise resolved.

For certain offenses, a conviction in the criminal process will result in an automatic revocation of the certificate without the necessity of an administrative hearing pursuant to TEC, §21.058. For other criminal offenses, the Occupations Code allows certain actions based on a conviction. In these instances, the tolling of the time limits helps conserve resources by preventing unnecessary hearings.

Not all types of misconduct that indicate the certificate holder is a threat to the health, safety, or welfare of Texas schoolchildren will generate a criminal indictment or an information filed with a criminal court. For instance, making alcohol available to a minor is not the type of crime that typically results in an indictment or an information. However, providing alcohol to a minor is a serious offense for a holder of a Texas teaching certificate.

The certificate holder is protected in these instances by the procedures in §249.14(i), which allow the certificate holder to show cause why an investigative notice should not be placed on the certificate holder's certification records. The agency does provide the certificate holder the ability to respond to the information the agency has received.

**Comment.** The TSTA commented that the rule should require the TEA staff to contact law enforcement to check on the status of a criminal matter.

**Response.** The SBEC agreed. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. When the time limits for an investigative notice are tolled based on a pending criminal matter, the accused educator would typically already know when that matter is pending. However, if the notice was issued based on a pending criminal investigation, the educator may not know when that investigation is closed. The adopted amendment to §249.14(j)(2) includes language specifying that staff will attempt to check the status of the pending criminal investigation once every two months.

**Comment.** The ATPE commented that §249.14(j)(2) should be rewritten to remove criminal investigation tolling language, stating that the proposed language is too broad to be meaningful. The ATPE expressed concern about the definition of events sufficient to toll the investigative notice and the length of time the TEA staff would keep an investigative notice on the educator's certificate. The ATPE requested that the SBEC adopt a reasonable time limit with specific, limited exceptions for extraordinary circumstances.

**Response.** The SBEC disagreed with removing the criminal investigation tolling language in subsection (j)(2) but agreed with clarifying the time limit. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The adopted amendment specifies that a criminal matter includes an arrest, an investigation, or prosecution by a criminal law enforcement agency. The agency tolls the time limit for the investigative flag while the criminal investigation is pending in order to allow that process to reach its completion. The adopted language also clarifies that the tolling period shall end upon receiving notice that the criminal matter has been resolved. In addition, §249.14(j)(3) was modified at adoption to include that TEA staff may toll the time limit upon agreement of the parties.

**Comment.** The TFT commented that §249.14(j)(2) should be amended to remove reference to investigations and the time limit. The TFT is concerned that this subsection would allow the agency, if a related criminal matter is ongoing, to suspend the clock. The TFT stated that an "investigation" is something that can be initiated by an individual law enforcement officer; however, it is not limited in time nor is it reviewed by any outside authority. The TFT cited an arrest warrant as an example.

**Response.** The SBEC disagreed with removing the criminal investigation tolling language in subsection (j)(2) but agreed with clarifying the time limit. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The adopted amendment specifies that a criminal matter includes an arrest, an investigation, or prosecution by a criminal law enforcement agency. The agency tolls the time limit for the investigative flag while the criminal investigation is pending in order to allow that process to reach its completion. The adopted language also clarifies that the tolling period shall end upon receiving notice that the criminal matter has been resolved. In addition, §249.14(j)(3) was modified at adoption to include that TEA staff may toll the time limit upon agreement of the parties.

Comment. The TSTA commented that §249.14(j)(3) should be amended so that the time limit for the investigative notice may be tolled by the agreement of both parties.

Response. The SBEC agreed. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The adopted amendment includes the modification to 19 TAC §249.14(j)(3) to allow for the extension of the time limits upon the agreement of both parties.

Comment. The Texas Classroom Teachers Association (TCTA) commented that minor characteristics such as hugging and kissing a student, which pre-kindergarten and kindergarten teachers do on a regular basis, are included in §249.14(m). The TCTA asked that subsection (m) be struck and that a stakeholder meeting be held that would include discussion of language in subsection (m).

Response. The SBEC agreed with the need for clarification. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The adopted amendment includes modifying 19 TAC §249.14(m)(2)(H) to clarify that inappropriate hugging, kissing, or excessive touching would constitute solicitation of a romantic relationship.

Comment. The TSTA commented that the term solicitation of a romantic relationship is too vague.

Response. The SBEC agreed. The SBEC took action to adopt the amendment, subject to SBOE review, with changes since published as proposed. The adopted amendment includes modifying 19 TAC §249.14(m)(2) to clarify the types of acts that may indicate that the educator has solicited a romantic relationship with a student. Also, §249.14(m)(2)(H) was modified at adoption to clarify that inappropriate hugging, kissing, or excessive touching would constitute solicitation of a romantic relationship.

The SBOE took no action on the review of the adopted amendment to 19 TAC §249.14 at the July 20, 2007, SBOE meeting.

At its July 27, 2007, meeting, the SBEC is scheduled to consider additional changes to §249.14 for filing as proposed to comply with Senate Bill 9, 80th Texas Legislature, 2007.

The amendment is adopted under the TEC, §21.041(b)(7), which requires the SBEC by rule to provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Government Code, Chapter 2001.

The adopted amendment implements the TEC, §21.041(b)(7).

*§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.*

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify in writing the SBEC by filing a report

with the TEA staff within seven calendar days of the date the person first obtains or has knowledge of information indicating any of the following circumstances:

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor; or

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with paragraph (3) of this subsection shall notify the governing body of the employing school district before filing the report with the TEA staff.

(e) A report filed under subsection (d) of this section shall, at a minimum, summarize the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; and last known mailing address and home and daytime phone numbers. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

(f) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract in violation of the Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c), unless the board of trustees of the employing school district:

(1) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2); and

(2) submits a written complaint to the TEA staff within 30 calendar days after the educator separates from employment.

(g) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject

of the investigation. All cases accepted for investigation shall be assigned one of the following priorities:

(1) Priority 1: conduct that indicates a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including but not limited to the following:

- (A) any conduct constituting a felony criminal offense;
- (B) indecent exposure;
- (C) public lewdness;
- (D) child abuse and/or neglect;
- (E) possession of a weapon on school property;
- (F) drug offenses occurring on school property;
- (G) sale to or making alcohol or other drugs available to a student or minor;
- (H) sale, distribution, or display of harmful material to a student or minor;
- (I) certificate fraud;
- (J) serious testing violations;
- (K) deadly conduct; and
- (L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: other conduct including but not limited to the following:

- (A) any conduct constituting a misdemeanor criminal offense or testing violation which is not described as Priority 1 under paragraph (1) of this subsection;
- (B) contract abandonment; and
- (C) code of ethics violations.

(3) An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received.

(4) For purposes of this subsection, a serious testing violation is a failure to observe the requirements of test administration established by the commissioner of education in a manner that involves dishonesty or intent to affect the test score of a student or action that is calculated to effect the accountability rating of a school district or campus.

(h) After accepting a case for investigation, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation for conduct described in subsection (g)(1) of this section. The placement of an investigative notice must follow the procedures set forth in subsection (i) of this section.

(i) Prior to placing an investigative notice on an educator's certification records, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(1) At least ten days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title (relating to Procedures in General).

(2) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct which forms the basis for the investigative notice and shall provide the certificate holder the opportunity to show cause within ten days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

(j) An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal matter includes an arrest, an investigation, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with a law enforcement agency where a criminal investigation is pending to determine whether the criminal investigation has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, or upon agreement of the parties.

(k) The TEA staff shall remove an investigative notice from the certification records in the following situations.

(1) When a case's final disposition occurs within the time limits established in subsection (j) of this section, an investigative notice shall be removed.

(2) If the time limits for an investigative notice have been exceeded; and

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(l) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title (relating to Disciplinary Action by Board). Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

(m) The following words and terms, when used in this section, shall have the following meanings.

(1) For purposes of this section, "TEA staff" means staff of the Texas Education Agency assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(2) For purposes of this section, solicitation of a romantic relationship means deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship characterized by an ardent emotional attachment or pattern of exclusivity. Acts that constitute the solicitation of a romantic relationship include, but are not limited to:

(A) behavior, gestures, expressions, communications, or a pattern of communication with a student that are unrelated to the educator's job duties and which may reasonably be interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, including statements of love, affection or attraction. When evaluating whether communications constitute the solicitation of a romantic relationship, the TEA staff may consider the following:

- (i) the nature of the communications;
  - (ii) the timing of the communications;
  - (iii) the extent of the communications;
  - (iv) whether the communications were made openly or secretly;
  - (v) the extent that the educator attempts to conceal the communications;
  - (vi) if the educator claims to be counseling a student, the SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate law enforcement agencies; and
  - (vii) any other communications tending to show that the educator solicited a romantic relationship with the student;
- (B) making inappropriate comments about a student's body;
- (C) making sexually demeaning comments to a student;
- (D) making comments about a student's potential sexual performance;
- (E) requesting details of a student's sexual history;
- (F) requesting a date;
- (G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
- (H) inappropriate hugging, kissing, or excessive touching;
- (I) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
- (J) any other acts tending to show that the educator solicited a romantic relationship with the student, including, but not limited to, providing the student with drugs or alcohol.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2007.

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State Board for Educator Certification

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For further information, please call: (512) 475-1497



## SUBCHAPTER F. ENFORCEMENT OF THE EDUCATOR'S CODE OF ETHICS

### 19 TAC §§249.48 - 249.51

The State Board for Educator Certification (SBEC) adopts amendments to §§249.48 - 249.51, relating to enforcement of the educator's code of ethics. The amendment to §249.48 is adopted without changes to the proposed text as published in the February 2, 2007, issue of the *Texas Register* (32 TexReg 438) and will not be republished. The amendments to §§249.49 - 249.51 are adopted with changes to the proposed text published in the February 2, 2007, issue. The sections establish provisions relating to time for filing of complaint; form of complaint; required service; local resolution; grounds for dismissal of a complaint by executive director or review committee; and executive director's review and notice. The adopted amendments update the current rules to reflect statutory changes and allow the Texas Education Agency (TEA) staff assigned to handle the complaints on behalf of the SBEC the option to dismiss complaints by declining to pursue sanctions or by issuing a letter of caution.

Texas Education Code (TEC), §21.041(b)(7) and (8), authorize the SBEC to adopt rules providing for disciplinary proceedings and enforcing the educator's code of ethics. The rules in 19 TAC Chapter 249, Subchapter F, Enforcement of the Educator's Code of Ethics, specify the current process to resolve ethical disputes.

Currently, §249.48, Time for Filing of Complaint, establishes the time limit for the filing of an educator's code of ethics complaint as 90 calendar days after the date of the last act giving rise to the complaint. Section 249.49, Form of Complaint; Required Service; Local Resolution, specifies the information that must be included in a code of ethics complaint and verified by affidavit. This section also specifies that the complaint filed with the executive director must also be served on the educator at the same time via certified mail and that the superintendent or president of the board of trustees shall resolve a code of ethics complaint within 45 calendar days after receiving the notice in writing. Section 249.50, Grounds for Dismissal of a Complaint by Executive Director or Review Committee, establishes the grounds for dismissing all or part of a code of ethics complaint. Section 249.51, Executive Director's Review and Notice, establishes the requirements, including timelines, for reviewing code of ethics complaints.

The adopted amendments to 19 TAC Chapter 249, Subchapter F, Enforcement of the Educator's Code of Ethics, modify the current resolution process for code of ethics complaints to address the following issues and allow for a more efficient resolution.

The current resolution process in rule is cumbersome and inefficient, resulting in a backlog of complaints. Many of the complaints could have been resolved through another governmental entity that is responsible for the alleged violation, or could have been dismissed early if the alleged ethical violation did not rise to the level that would justify a sanction.

The time limit currently in rule for filing a complaint does not allow a complaint to be filed more than 90 days after the last act giving rise to the complaint. This rule prevented complaints from being filed when it took time for the complainant to discover the alleged ethical violation.

The educator's code of ethics also requires processing of complaints that claim violation of any state or federal statute or regulation. Many of these statutes and regulations are enforced



by another state or federal agency, but the code of ethics processes do not require the complainant to resolve their complaint at the appropriate agency as a prerequisite to seeking sanctions against a certified educator. As a result, the SBEC is called on to interpret and make rulings on areas of the law outside of its subject matter expertise or responsibility.

Currently, the educator's code of ethics also does not allow for an expedited disposition when the alleged ethical violation is one that does not rise to the level that requires a state-issued sanction. The TEA staff should have the ability to dismiss complaints where staff has decided, as a matter of policy, that the alleged unethical behavior is not worthy of a sanction. For the purpose of efficiency, the TEA staff should be able to do this without requesting a response from the educator or making factual and legal findings.

In response to these issues, the following amendments are adopted to 19 TAC Chapter 249, Subchapter F, §§249.48-249.51.

Section 249.48 was amended to modify the time limit for filing an educator's code of ethics complaint by allowing complaints to be filed after the date on which the complainant knew or should have known the date of the last act giving rise to the complaint.

Section 249.49 was amended to add language to subsection (b) that authorizes staff to limit the volume of exhibits and require a clear reference to exhibits in a code of ethics complaint. This section was also amended to add new subsection (e) to establish that TEA staff are able to suspend consideration of a complaint pending resolution of a separate complaint by another agency with appropriate jurisdiction.

Section 249.50 was amended to add new paragraph (5) to revise the factors used to determine dismissal of all or part of a code of ethics complaint to include allegations that do not warrant a sanction or only warrant a notice of disposition. In response to public comments, "letter of caution" was changed to "notice of disposition." The section title was updated to reflect the change from executive director to the TEA staff. Additional non-substantive, technical edits were also made to this section for clarity.

Section 249.51 was amended to add new subsection (e) to allow the TEA staff to dismiss a code of ethics complaint if the alleged conduct warrants no sanctions or only a notice of disposition to the educator. The section title was updated to reflect the change from executive director to the TEA staff. Additional non-substantive, technical edits were also made to this section for clarity.

Throughout 19 TAC §§249.48 - 249.51, "executive director" was changed to "Texas Education Agency staff" to reflect the assignment of the SBEC's administrative functions and services to the TEA in TEC, §21.035. Adopted new subsection (g) was added to track that statutory assignment. In addition, House Bill 1116, 79th Texas Legislature, Regular Session, 2005, repealed TEC, §21.039, which established the SBEC executive director position.

Since published as proposed, additional technical edits were made to §§249.49 - 259.51 to clarify and reflect the statutory changes previously noted. These minor edits change "agency" to "Texas Education Agency staff" and "board" to "State Board for Educator Certification," where appropriate.

Following the January 2007 SBEC meeting, notice of the proposed amendment was filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding adoption of the amendments.

**Comment.** The Texas Classroom Teachers Association (TCTA) objected to the term, "letter of caution." The TCTA did not object to dismissing a Code of Ethics complaint with this type of letter, but would like it renamed to a term more neutral such as "letter of dismissal" or "notice of non-determination."

**Response.** The SBEC agreed. The SBEC took action to adopt the amendments, subject to State Board of Education (SBOE) review, with changes since published as proposed. The term, "letter of caution," was amended to "notice of disposition."

**Comment.** The Association of Texas Professional Educators (ATPE) expressed concern that the letter of caution or letter of warning would have the effect of a sanction without due process. The ATPE recommended that the letter should be called a letter of disposition. The ATPE contended that there is no substantive difference between the words "warning" and "caution" because the words are synonyms. The ATPE also expressed concern that the educator would not have the opportunity to respond before the TEA issues its letter of caution.

**Response.** The SBEC agreed. The SBEC took action to adopt the amendments, subject to SBOE review, with changes since published as proposed. The term, "letter of caution," was amended to "notice of disposition."

**Comment.** The Texas State Teachers Association (TSTA) expressed concern regarding the term "letter of caution," noting that there is little difference in meaning between "caution" and "warning." The TSTA commented that §249.50(5) indicates the grounds for dismissal and has a two-tier system in place. The TSTA stated that issuing a letter of caution is making a determination based on the merits of the allegations. The TSTA recommended that the letter should not be drafted in a way that leaves some uncertainty about the allegations, even though there may be issues not yet pursued. The TSTA supported using a letter that explains the complaints against the educator and that provides the rationale for dismissal when grounds for a Code of Ethics complaint are not met.

**Response.** The SBEC agreed. The SBEC took action to adopt the amendments, subject to SBOE review, with changes since published as proposed. The term, "letter of caution," was amended to "notice of disposition."

**Comment.** The TSTA suggested that the SBEC postpone action on this item until the SBEC Code of Ethics Committee has an opportunity to meet to allow organizations to provide input and answer questions before the SBEC takes final action on the proposal.

**Response.** The SBEC disagreed and took action to adopt the amendments, subject to SBOE review, with changes since published as proposed.

**Comment.** The Texas Federation of Teachers (TFT) requested clarification in §249.51(e) regarding the purpose and scope of the letter of caution. The TFT requested additional language specifying that the letter is not proof of conduct alleged but is simply information about the educator's code of conduct and responsibilities under the code of conduct. The TFT recommended that the change could be made by changing current language "may not be considered proof of the conduct alleged" to "may not be considered proof or evidence of the conduct alleged." The TFT stated that the letter would imply some degree of guilt with no due process for teachers.

**Response.** The SBEC disagreed and did not add the language requested by TFT. The SBEC took action to adopt the amend-

ments, subject to SBOE review, with changes since published as proposed by amending the term, "letter of caution," to "notice of disposition" to better describe what the SBEC had intended.

The SBOE took no action on the review of the adopted amendments to 19 TAC §§249.48 - 249.51 at the July 20, 2007, SBOE meeting.

The amendments are adopted under the TEC, §21.041(b)(7), which requires the SBEC by rule to provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Government Code, Chapter 2001, and TEC, §21.041(b)(8), which requires the SBEC by rule to provide for the adoption, amendment, and enforcement of an educator's code of ethics.

The adopted amendments implement the TEC, §21.041(b)(7) and (8).

*§249.49. Form of Complaint; Required Service; Local Resolution.*

(a) A complaint shall be verified by affidavit and shall include the information specified by this subsection:

(1) the full name, current mailing address, and telephone number of the complainant and the complainant's representative, if any;

(2) the full name, current mailing address, and telephone number of the educator alleged to have violated the code of ethics and the educator's representative, if any;

(3) a clear and complete description of each act alleged to have violated the code of ethics, including the specific place, date, and time of each such act, and identification of the date of the last act alleged to have violated the code of ethics;

(4) a specific citation of each principle and standard of the code of ethics allegedly violated by the educator, linking each act described in paragraph (3) of this subsection to the principle and standard allegedly violated and explaining how each such act constitutes a violation of the applicable principle and standard;

(5) as available, the full name, current mailing address, and telephone number of each witness to each act alleged to have violated the code of ethics;

(6) a declaration that the complainant has informed in writing the educator against whom the complaint is being made as well as the superintendent or the president of the board of trustees of the district employing that educator, as appropriate under subsection (c) of this section, of the nature of the complaint, and providing the date upon which such written notification occurred; and

(7) a declaration that to the best of the complainant's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the complaint is not frivolous as defined by §249.53 of this title (relating to Frivolous Complaints).

(b) The Texas Education Agency (TEA) staff may develop a complaint form that complies with subsection (a) of this section. The TEA staff may limit the length and size of exhibits initially filed with a complaint and shall require specific citations to any voluminous exhibits.

(c) A complaint shall be filed with the TEA staff and, at the time of filing, served on the educator accused of having violated the code of ethics and the superintendent of the school district employing the accused educator by certified United States mail, return receipt requested. If the superintendent is the educator alleged to have violated the code of ethics, then the complainant shall notify the president of the board of trustees of the district employing the accused superintendent.

The TEA staff shall also notify the accused educator of the filing of a complaint against him or her.

(d) The superintendent or president of the board of trustees notified under subsection (c) of this section shall have 45 calendar days after receiving written notice of the complaint in which to resolve the complainant's allegations before the TEA staff acts on the complaint. The TEA staff shall suspend its review of a complaint under this subchapter until the earlier of:

(1) the date on which the TEA staff receives notice from the complainant withdrawing the complaint;

(2) the date on which the TEA staff receives notice from the superintendent or the board president notified under subsection (c) of this section that the accused educator is no longer employed by the district; or

(3) 50 calendar days after the complaint was filed with the TEA staff.

(e) The TEA staff may suspend consideration of a complaint that the educator violated a state or federal statute or regulation pending resolution of a complaint by the TEA or another agency with jurisdiction over that statute or regulation.

*§249.50. Grounds for Dismissal of a Complaint by Texas Education Agency Staff or Review Committee.*

Under §249.51 of this title (relating to Texas Education Agency Staff Review and Notice) and §249.52 of this title (relating to Appeal; Review Committee), the Texas Education Agency (TEA) staff or the review committee may dismiss all or part of a complaint only based on a determination that:

(1) the commissioner of education or commissioner's designee, review committee, State Office of Administrative Hearings, or State Board for Educator Certification or a court of competent jurisdiction has previously disposed of a similar complaint or petition based on the same alleged facts;

(2) the complaint fails to comply with the requirements of §249.49 of this title (relating to Form of Complaint; Required Service; Local Resolution);

(3) the complaint fails to state a violation of the code of ethics after, for purposes of determining jurisdiction only, accepting the facts relating to the alleged acts or omissions of the accused educator as stated on the face of the complaint as true;

(4) the complaint was not timely filed;

(5) the allegations in the complaint do not warrant a sanction, or only warrant a notice of disposition; or

(6) the complaint is frivolous as defined by §249.53 of this title (relating to Frivolous Complaints).

*§249.51. Texas Education Agency Staff Review and Notice.*

(a) The Texas Education Agency (TEA) staff shall review a complaint filed under this subchapter for possible dismissal. In conducting this review, the TEA staff shall consider the complaint, a single response by the accused educator, and any additional information he or she may have requested from the complainant or the staff.

(b) Not later than 60 days after being notified of a complaint against him or her under §249.49(d) of this title (relating to Form of Complaint; Required Service; Local Resolution), the accused educator or his or her representative may file with the TEA staff a single submission responding to the complaint.

(c) Not later than 130 calendar days after receiving a complaint filed under this subchapter, the TEA staff shall notify appropriate staff,

the complainant, and the accused educator of the TEA staff's disposition in accordance with the following:

(1) dismissal of the complaint in whole or in part; or

(2) approval of the complaint in whole or in part and ordering staff to file an appropriate petition on behalf of the complainant with the State Office of Administrative Hearings within 90 days of the notice provided under this subsection.

(d) The TEA staff may issue such further orders as are necessary to accomplish the TEA staff's intended disposition, including requiring the complainant to supplement the complaint and establishing consequences for failure to comply. The TEA staff shall set a reasonable deadline for staff and the complainant to comply with an order under this subsection.

(e) The TEA staff may dismiss a complaint based on a determination that the conduct alleged in the complaint does not warrant a sanction. The TEA staff may also dismiss a complaint with a notice of disposition to the educator that additional allegations of a similar nature could result in the approval of a complaint. A notice of disposition provides guidance to the educator and is not a disciplinary action or sanction, may not be considered proof of the conduct alleged in any subsequent proceeding, and does not constitute a determination of the facts underlying the complaint.

(f) The TEA staff shall send a notice of disposition with related orders to the complainant and the accused educator by certified United States mail, return receipt requested. A notice reflecting a dismissal shall specify which of the grounds set out in §249.50 of this title (relating to Grounds for Dismissal of a Complaint by Texas Education Agency Staff or Review Committee) the TEA staff relied upon in making his or her decision.

(g) For purposes of this section, "TEA staff" means staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2007.

TRD-200703088

Raymond Glynn

Associate Commissioner, Educator Quality and Standards  
State Board for Educator Certification

Effective date: August 9, 2007

Proposal publication date: February 2, 2007

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

#### SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

#### 22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143 concerning Sponsor's Record without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2975). The text of the rule will not be republished.

The amendment will require CPE sponsors to keep a copy of the complete course material as contemplated by Board Rule §523.140 rather than just an outline for the course.

The amendment will function by creating a more thorough record for CPE sponsors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703165

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 12, 2007

Proposal publication date: June 1, 2007

For further information, please call: (512) 305-7848



#### 22 TAC §523.144

The Texas State Board of Public Accountancy adopts an amendment to §523.144 concerning Board Registered CPE Sponsors after January 1, 2005 without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2976). The text of the rule will not be republished.

The amendment will reduce the total registration fee for CPE sponsors that offer 1-10 courses from \$600.00 to \$400.00; eliminate the category for sponsors that offer 5-10 courses; reduce the total registration fee for sponsors offering 11-40 courses from \$1500.00 to \$750.00; and reduce the total registration fee for sponsors offering 41 or more courses from \$2500.00 to \$1250.00.

The amendment will function by reducing fees for CPE sponsors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703166  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: August 12, 2007  
Proposal publication date: June 1, 2007  
For further information, please call: (512) 305-7848

## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 2. EMERGENCY PREPAREDNESS**

##### **25 TAC §2.1**

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §2.1, concerning the Preparedness Coordinating Council (PCC) without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2090); therefore, the section will not be republished.

##### **BACKGROUND AND PURPOSE**

The adopted amendment is necessary to comply with Health and Safety Code, §11.016, which authorizes the commission to establish advisory committees, and Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department with advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 2.1 has been reviewed and the department has determined that reasons for adopting the rule continue to exist because a rule on this subject is needed.

##### **SECTION-BY-SECTION SUMMARY**

Adopted amendments to §2.1 update legacy agency references; modify wording and punctuation of the rule for clarification; adopted amendments to §2.1(f) increase the number of council members from 17 to 24 to include additional members required by the Centers for Disease Control and Prevention Pandemic Influenza cooperative agreement guidance; and adopted amendments to §2.1(m) abolish the Hospital Preparedness Planning Committee and the Bioterrorism Preparedness and Response Committee.

##### **COMMENTS**

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

##### **LEGAL CERTIFICATION**

The department's Deputy General Counsel, Linda Wiegman, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

## **STATUTORY AUTHORITY**

The adopted amendment is authorized by Health and Safety Code, §11.016, which authorizes the commission to establish advisory committees; Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department with advice on public health preparedness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 19, 2007.

TRD-200703071  
Linda Wiegman  
Deputy General Counsel  
Department of State Health Services  
Effective date: August 8, 2007  
Proposal publication date: April 13, 2007  
For further information, please call: (512) 458-7111 x6972

## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER O. STATE SALES AND USE TAX**

##### **34 TAC §3.313**

The Comptroller of Public Accounts adopts amendments to §3.313, concerning cable television service, without changes to the proposed text as published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 607).

The adopted amendments implement substantive changes due to the decision in *Sharp v. Clearview Cable TV, Inc.*, 960 S.W.2d 424 (Tex.App.--Austin 1998, pet. denied) relating to equipment that may be purchased for resale by a cable television service provider, and due to the Telecommunications Act of 1996 as it relates to the federal preemption of local taxes on direct-to-home satellite cable television service. Subsections (d), (e), and (g) are amended accordingly. Nonsubstantive changes are made throughout the section to improve clarity and readability.

Comments were received from an attorney for the Texas Cable and Telecommunications Association asking that the agency amend subsection (g) of the rule to provide that a direct-to-home satellite cable television service provider is exempt from collecting and remitting any local tax due on its service, but it may offer to collect and remit any local tax due for the convenience of its customers. The agency declined to amend the rule as proposed and instead maintain the language in the rule which reflects longstanding agency policy that direct-to-home satellite cable televi-

sion service is not subject to local tax under the Telecommunications Act of 1996.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.0101(a)(2) and §151.0033.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703185

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: August 12, 2007

Proposal publication date: February 16, 2007

For further information, please call: (512) 475-0387

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

#### **CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES**

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 101, concerning Administrative Rules and Procedures. DARS adopts the repeal of Subchapters F, G, H, J, K and L of Chapter 101 and replaces with new Subchapters A, B, C, and D of Chapter 101.

The repeals and new sections are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2537), and will not be republished.

The following Subchapters, Divisions, and sections in Title 40, Chapter 101, are adopted for repeal:

Subchapter F, Administrative Rules and Procedures Pertaining to Blind Services

Division 1, General Rules, §§101.3601, 101.3603, 101.3605, 101.3607, 101.3609, 101.3611, 101.3613, 101.3615, and 101.3617.

Division 2, Commission Board Procedures, §§101.3641, 101.3643, 101.3645, and 101.3647.

Division 3, Access to Public Information, §§101.3681, 101.3683, 101.3685, 101.3687, and 101.3689.

Division 4, Contract Dispute Resolution, §§101.3711, 101.3713, 101.3715, 101.3717, 101.3719, 101.3721, 101.3723, 101.3725, 101.3727, 101.3729, 101.3731, 101.3733, 101.3735, 101.3737, 101.3739, 101.3741, 101.3743, 101.3745, 101.3747, 101.3749,

101.3751, 101.3753, 101.3755, 101.3757, 101.3759, 101.3761, 101.3763, 101.3765, and 101.3767.

Division 5, Purchase of Goods and Services by the Commission, §§101.3801, 101.3807, and 101.3811.

Subchapter G, Administrative Rules and Procedures Pertaining to Rehabilitation Services

Division 1, General Rules, §§101.4001, 101.4003, 101.4005, 101.4007, 101.4009, 101.4011, 101.4013, 101.4015, 101.4017, 101.4019, 101.4021, 101.4023, 101.4025, 101.4027, 101.4029, 101.4031, 101.4033, 101.4035, 101.4037, 101.4039, and 101.4041.

Division 2, Legal Services, §101.4201 and §101.4203.

Division 3, Special Rules and Policies §§101.4223, 101.4225, 101.4227, 101.4229, 101.4231, 101.4233, 101.4235, 101.4237, 101.4239, and 101.4241.

Subchapter H, Purchase of Goods and Services for Rehabilitation Services

Division 4, Purchase of Goods and Services, §101.4525 and §101.4527.

Division 11, Historically Underutilized Businesses, §§101.5051, 101.5053, 101.5055, and 101.5057.

Division 13, Miscellaneous Requirements, §101.5201 and §101.5205.

Division 14, Contract Administration, §§101.5211, 101.5213, 101.5231, 101.5233, and 101.5235.

Subchapter J, Administrative Rules and Procedures Pertaining to Deaf and Hard of Hearing Services

Division 1, General Provisions, §§101.5801, 101.5803, 101.5805, 101.5807, 101.5809, 101.5811, 101.5813, 101.5815, 101.5817, 101.5819, 101.5821, 101.5823, 101.5825, 101.5827, 101.5829, 101.5831, 101.5833, 101.5835, 101.5837, 101.5839, 101.5841, 101.5843, 101.5845, 101.5847, 101.5849, 101.5851, 101.5853, 101.5855, 101.5857, 101.5859, 101.5861, and 101.5863.

Division 3, Program Standards and Procedures, §101.6401.

Division 4, Rulemaking Procedures, §§101.6451, 101.6453, 101.6455, 101.6457, 101.6459, and 101.6461.

Division 5, Gifts, Grants and Donations, §§101.6601, 101.6603, 101.6605, 101.6607, 101.6609, 101.6611, 101.6613, and 101.6615.

Division 6, Fees, §§101.6701, 101.6703, and 101.6705.

Division 7, Cooperative Activities, §101.6801.

Division 8, Memoranda of Understanding With State Agencies, §101.6821.

Subchapter K, Administrative Rules and Procedures Pertaining to the Rehabilitation Council of Texas, §101.8103.

Subchapter L, Administrative Rules and Procedures Pertaining to the State Independent Living Council, §101.9101.

The following new sections are adopted:

Subchapter A, General Rules, §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123, and 101.131.

Subchapter B, Purchase of Goods and Services, §§101.201, 101.203, 101.209, 101.211, and 101.213.

Subchapter C, Historically Underutilized Businesses, §§101.551, 101.553, 101.555, and 101.557.

Subchapter D, Councils and Committees, §§101.601, 101.603, and 101.605.

The repeals and new rules are being adopted to consolidate separate administrative and purchasing rules from the four legacy agencies of DARS: the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Interagency Council on Early Childhood Intervention, into agency-wide administrative and purchasing rules applicable to the entire Department of Assistive and Rehabilitative Services as provided by House Bill 2292, 78th Legislature, Regular Session.

Services as provided by House Bill 2292, 78th Legislature, Regular Session.

DARS received no comments regarding the adoption of the repeals or the new rules.

## **SUBCHAPTER F. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO BLIND SERVICES**

### **DIVISION 1. GENERAL RULES**

**40 TAC §§101.3601, 101.3603, 101.3605, 101.3607,  
101.3609, 101.3611, 101.3613, 101.3615, 101.3617**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703098

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: August 12, 2007

Proposal publication date: May 11, 2007

For further information, please call: (512) 424-4050



### **DIVISION 2. COMMISSION BOARD PROCEDURES**

**40 TAC §§101.3641, 101.3643, 101.3645, 101.3647**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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Proposal publication date: May 11, 2007

For further information, please call: (512) 424-4050



### **DIVISION 3. ACCESS TO PUBLIC INFORMATION**

**40 TAC §§101.3681, 101.3683, 101.3685, 101.3687, 101.3689**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703100

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: August 12, 2007

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For further information, please call: (512) 424-4050



### **DIVISION 4. CONTRACT DISPUTE RESOLUTION**

**40 TAC §§101.3711, 101.3713, 101.3715, 101.3717, 101.3719,  
101.3721, 101.3723, 101.3725, 101.3727, 101.3729, 101.3731,  
101.3733, 101.3735, 101.3737, 101.3739, 101.3741, 101.3743,  
101.3745, 101.3747, 101.3749, 101.3751, 101.3753, 101.3755,  
101.3757, 101.3759, 101.3761, 101.3763, 101.3765, 101.3767**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703101

Sylvia F. Hardman  
General Counsel  
Department of Assistive and Rehabilitative Services  
Effective date: August 12, 2007  
Proposal publication date: May 11, 2007  
For further information, please call: (512) 424-4050



## DIVISION 5. PURCHASE OF GOODS AND SERVICES BY THE COMMISSION

### 40 TAC §§101.3801, 101.3807, 101.3811

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO REHABILITATION SERVICES

### DIVISION 1. GENERAL RULES

#### 40 TAC §§101.4001, 101.4003, 101.4005, 101.4007, 101.4009, 101.4011, 101.4013, 101.4015, 101.4017, 101.4019, 101.4021, 101.4023, 101.4025, 101.4027, 101.4029, 101.4031, 101.4033, 101.4035, 101.4037, 101.4039, 101.4041

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 2. LEGAL SERVICES

### 40 TAC §101.4201, §101.4203

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## DIVISION 3. SPECIAL RULES AND POLICIES

### 40 TAC §§101.4223, 101.4225, 101.4227, 101.4229, 101.4231, 101.4233, 101.4235, 101.4237, 101.4239, 101.4241

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

## DIVISION 4. PURCHASE OF GOODS AND SERVICES

### 40 TAC §101.4525, §101.4527

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 11. HISTORICALLY UNDERUTILIZED BUSINESSES

### 40 TAC §§101.5051, 101.5053, 101.5055, 101.5057

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 13. MISCELLANEOUS REQUIREMENTS

### 40 TAC §101.5201, §101.5205

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## DIVISION 14. CONTRACT ADMINISTRATION

### 40 TAC §§101.5211, 101.5213, 101.5231, 101.5233, 101.5235

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER J. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO DEAF AND HARD OF HEARING SERVICES

### DIVISION 1. GENERAL PROVISIONS

### 40 TAC §§101.5801, 101.5803, 101.5805, 101.5807, 101.5809, 101.5811, 101.5813, 101.5815, 101.5817, 101.5819, 101.5821, 101.5823, 101.5825, 101.5827, 101.5829, 101.5831, 101.5833, 101.5835, 101.5837, 101.5839, 101.5841, 101.5843, 101.5845, 101.5847, 101.5849, 101.5851, 101.5853, 101.5855, 101.5857, 101.5859, 101.5861, 101.5863

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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### **DIVISION 3. PROGRAM STANDARDS AND PROCEDURES**

#### **40 TAC §101.6401**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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### **DIVISION 4. RULEMAKING PROCEDURES**

#### **40 TAC §§101.6451, 101.6453, 101.6455, 101.6457, 101.6459, 101.6461**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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### **DIVISION 5. GIFTS, GRANTS AND DONATIONS**

#### **40 TAC §§101.6601, 101.6603, 101.6605, 101.6607, 101.6609, 101.6611, 101.6613, 101.6615**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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### **DIVISION 6. FEES**

#### **40 TAC §§101.6701, 101.6703, 101.6705**

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### **DIVISION 7. COOPERATIVE ACTIVITIES**

#### **40 TAC §101.6801**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **DIVISION 8. MEMORANDA OF UNDERSTANDING WITH STATE AGENCIES**

### **40 TAC §101.6821**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **SUBCHAPTER K. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE REHABILITATION COUNCIL OF TEXAS**

### **40 TAC §101.8103**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **SUBCHAPTER L. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE STATE INDEPENDENT LIVING COUNCIL**

### **40 TAC §101.9101**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **SUBCHAPTER A. GENERAL RULES**

### **40 TAC §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123, 101.131**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER B. PURCHASE OF GOODS AND SERVICES

### 40 TAC §§101.201, 101.203, 101.209, 101.211, 101.213

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES

### 40 TAC §§101.551, 101.553, 101.555, 101.557

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER D. COUNCILS AND COMMITTEES

### 40 TAC §§101.601, 101.603, 101.605

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER E. APPEALS AND HEARING PROCEDURES FOR VOCATIONAL REHABILITATION AND INDEPENDENT LIVING PROGRAMS

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 101, concerning Administrative Rules and Procedures. This adoption adds a new Subchapter E, Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs, Division 1, General Rules, §101.811 and §101.821; Division 2, Division for Blind Services Appeals and Hearing Procedures, §§101.851, 101.853, 101.855, 101.857, 101.859, 101.861, 101.863, 101.865, 101.867, 101.869, 101.871, 101.873, 101.875, 101.877, 101.879, 101.881, 101.883 and Division 3, Division for Rehabilitation Services Appeals and Hearing Procedures, §§101.901, 101.903, 101.905, 101.907, 101.909 and 101.911, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2529), and the sections will not be republished.

The new rules are being adopted to clarify and update program rules from the former Texas Commission for the Blind and the former Texas Rehabilitation Commission, which were consolidated into the DARS in 2004, into a single set of rules applicable to appeal and hearings procedures for all vocational rehabilitation and independent living programs administered by the DARS, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to appeals and hearing procedures for these programs were previously contained in Chapter 106, Subchapter A, Division 1, of this title, relating to Blind Services, and in Chapter 107, Subchapter C of this title, relating to Rehabilitation Services, the repeals of which are being adopted contemporaneously elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the new rules.

## DIVISION 1. GENERAL RULES

### 40 TAC §§101.811, §101.821

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 2. DIVISION FOR BLIND SERVICES APPEALS AND HEARING PROCEDURES

**40 TAC §§101.851, 101.853, 101.855, 101.857, 101.859,  
101.861, 101.863, 101.865, 101.867, 101.869, 101.871,  
101.873, 101.875, 101.877, 101.879, 101.881, 101.883**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 3. DIVISION FOR REHABILITA- TION SERVICES APPEALS AND HEARING PROCEDURES

**40 TAC §§101.901, 101.903, 101.905, 101.907, 101.909,  
101.911**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER F. DURABLE MEDICAL EQUIPMENT AND ASSISTIVE TECHNOLOGY LISTING

### DIVISION 2. DIVISION FOR BLIND SERVICES APPEALS AND HEARING PROCEDURES

**40 TAC §§101.1001, 101.1003, 101.1005, 101.1007,  
101.1009, 101.1011**

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 101, relating to Administrative Rules and Procedures, by adopting new Subchapter F, Durable Medical Equipment and Assistive Technology Listing, §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009 and 101.1011, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2553) and will not be republished.

The new rules are being adopted to update administrative and program rules from the former Texas Rehabilitation Commission, which was consolidated into DARS in 2004, by setting forth a single set of rules applicable to the technology listing activities of DARS, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to technology listing activities were previously contained in Chapter 107, Subchapter G of this title, relating to Durable Medical Equipment and Assistive Technology Listing. The repeal of those rules is being contemporaneously adopted elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the new rules.

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## CHAPTER 105. GENERAL CONTRACTING RULES

### SUBCHAPTER F. CLAIMS FOR BREACH OF CONTRACT

**40 TAC §§105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, 105.1425**

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 105, Subchapter F, relating to Claims for Breach of Contract. DARS adopts new §§105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, and 105.1425, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2554) and will not be republished.

The new rules are replacing rules currently in Chapter 101, Subchapter F, Division 4 of this title, relating to Contract Dispute Resolution. The adoption of the repeal of those rules is contemporaneously proposed elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the new rules.

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## CHAPTER 106. BLIND SERVICES

### SUBCHAPTER A. APPEALS AND HEARING PROCEDURES

#### DIVISION 1. VOCATIONAL REHABILITATION AND INDEPENDENT LIVING PROGRAMS

**40 TAC §§106.19, 106.23, 106.25, 106.27, 106.29, 106.30, 106.33, 106.34, 106.37, 106.39, 106.41, 106.43, 106.45, 106.47, 106.49, 106.51, 106.53, 106.55, 106.57, 106.59, 106.61, 106.63, 106.65, 106.67, 106.69, 106.71, 106.73, 106.75, 106.77, 106.79, 106.81, 106.83, 106.85, 106.87, 106.89, 106.91**

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 106, concerning Blind Services. DARS adopts the repeal of Subchapter A, Division 1, §§106.19, 106.23, 106.25, 106.27, 106.29, 106.30, 106.33, 106.34, 106.37, 106.39, 106.41, 106.43, 106.45, 106.47, 106.49, 106.51, 106.53, 106.55, 106.57, 106.59, 106.61, 106.63, 106.65, 106.67, 106.69, 106.71, 106.73, 106.75, 106.77, 106.79, 106.81, 106.83, 106.85, 106.87, 106.89 and 106.91, concerning Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2555), and will not be republished.

This repeal is being adopted to clarify and update program rules from the former Texas Commission for the Blind, which were consolidated into DARS in 2004, into agency-wide appeals and hearings rules applicable to all vocational rehabilitation and independent living programs now administered by DARS, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs, Chapter 101, new Subchapter E, are being adopted contemporaneously elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the repeal.

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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For further information, please call: (512) 424-4050



## CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts the repeals of Subchapters A, D, and M, in their entirety, and adopts the repeals and amendments to certain rules contained in Subchapter B and Subchapter N. Specifically, this proposal adopts the repeals of Subchapter A, Texas Rehabilitation Advisory Council, §§107.11, 107.13, 107.15, 107.17, and 107.19; Subchapter B, Vocational Rehabilitation Services Program, Division 4, Eligibility, Ineligibility, and Certification, §107.193; Subchapter D, Extended Rehabilitation Services Program, §§107.601, 107.603, 107.605, 107.607, and 107.609; Subchapter M, Transition Planning Program,

§§107.1401, 107.1403, and 107.1405; and Subchapter N, Memoranda of Understanding With Other State Agencies, §§107.1611, 107.1615, and 107.1617. This adoption also amends Subchapter B, Vocational Rehabilitation Services Program, Division 1, Provision of Vocational Rehabilitation Services, §§107.101, 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, and 107.137, and adds new §107.139; Division 2, Client Participation, §107.151 and §107.153; Division 3, Comparable Benefits, §§107.171, 107.173, and 107.175; and Division 4, Eligibility and Ineligibility, §107.191 and §107.197, and adds new §107.193; Division 5, Methods of Administration of Vocational Rehabilitation, §§107.215, 107.217, 107.221, 107.223, and 107.225; Subchapter F, Independent Living Services Program, §§107.801, 107.803, 107.805, and 107.807, and adds new §107.811; Subchapter L, Comprehensive Rehabilitation Services, §107.1203 and §107.1209; and Subchapter N, Memoranda of Understanding with Other State Agencies, §107.1607. The sections are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2597) and will not be republished.

This adoption also changes the title of Chapter 107 from "Rehabilitation Services" to "Division for Rehabilitation Services."

These repeals, amendments, and new rules are being adopted to clarify and update program rules from the former Texas Rehabilitation Commission, which was consolidated into DARS in 2004, into rules applicable to programs now administered by the Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to Subchapter G, Durable Medical Equipment and Assistive Technology Listing, §§107.1001, 107.1003, 107.1005, 107.1007, 107.1009, 107.1011, and 107.1013, are being repealed contemporaneously elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the repeals, amendments, or new rules.

## SUBCHAPTER A. TEXAS REHABILITATION ADVISORY COUNCIL

### 40 TAC §§107.11, 107.13, 107.15, 107.17, 107.19

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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## SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM DIVISION 1. PROVISION OF VOCATIONAL REHABILITATION SERVICES

### 40 TAC §§107.101, 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137, 107.139

The amendments and new rule are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

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## DIVISION 2. CLIENT PARTICIPATION

### 40 TAC §107.151, §107.153

The amendments are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. COMPARABLE BENEFITS

### 40 TAC §§107.171, 107.173, 107.175

The amendments are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **DIVISION 4. ELIGIBILITY AND INELIGIBILITY**

### **40 TAC §§107.191, 107.193, 107.197**

The amendments and new rule are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **DIVISION 4. ELIGIBILITY, INELIGIBILITY, AND CERTIFICATION**

### **40 TAC §107.193**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **DIVISION 5. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION**

### **40 TAC §§107.215, 107.217, 107.221, 107.223, 107.225**

The amendments are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **SUBCHAPTER D. EXTENDED REHABILITATION SERVICES PROGRAM**

### **40 TAC §§107.601, 107.603, 107.605, 107.607, 107.609**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER F. INDEPENDENT LIVING SERVICES PROGRAM

### 40 TAC §§107.801, 107.803, 107.805, 107.807, 107.811

The amendments and new rule are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER L. COMPREHENSIVE REHABILITATION SERVICES

### 40 TAC §107.1203, §107.1209

The amendments are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## SUBCHAPTER M. TRANSITION PLANNING PROGRAM

### 40 TAC §§107.1401, 107.1403, 107.1405

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER N. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

### 40 TAC §107.1607

The amendment is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### 40 TAC §§107.1611, 107.1615, 107.1617

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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**SUBCHAPTER C. DUE PROCESS HEARING  
AND MEDIATION BY APPLICATIONS/CLIENTS  
CONCERNING DETERMINATIONS BY  
AGENCY PERSONNEL THAT AFFECT  
THE PROVISION OF VOCATIONAL  
REHABILITATION SERVICES**

**40 TAC §§107.401, 107.403, 107.405, 107.407, 107.409,  
107.411, 107.413, 107.415**

The Texas Health and Human Services Commission adopts changes to the rules of the Department of Assistive and Rehabilitative Services (DARS), Title 40, Part 2, Chapter 107, concerning Rehabilitation Services. DARS adopts the repeal of Subchapter C, §§107.401, 107.403, 107.405, 107.407, 107.409, 107.411, 107.413, and 107.415, concerning Due Process Hearings and Mediation by Applicants/Clients Concerning Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2608), and will not be republished.

The repeal is being adopted to clarify and update program rules from the former Texas Rehabilitation Commission, which was consolidated into DARS in 2004, into agency-wide appeals and hearings rules applicable to all vocational rehabilitation and independent living programs now administered by Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs, Chapter 101, new Subchapter E, are being adopted contemporaneously elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the repeal.

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of Assistive and Rehabilitative Services

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**SUBCHAPTER G. DURABLE MEDICAL  
EQUIPMENT AND ASSISTIVE TECHNOLOGY  
LISTING**

**40 TAC §§107.1001, 107.1003, 107.1005, 107.1007,  
107.1009, 107.1011, 107.1013**

The Texas Health and Human Services Commission adopts changes to the rules of the Department of Assistive and Rehabilitative Services (DARS), Title 40, Part 2, Chapter 107, relating to Rehabilitation Services. DARS adopts the repeal of Subchapter G, Durable Medical Equipment and Assistive Technology Listing, §§107.1001, 107.1003, 107.1005, 107.1007, 107.1009, 107.1011 and 107.1013, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2608), and will not be republished.

This repeal is being adopted to clarify and update program rules from the former Texas Rehabilitation Commission, which were consolidated into DARS in 2004, into rules applicable to programs now administered by the Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session. New rules relating to Durable Medical Equipment and Assistive Technology Listing have been proposed in a new subchapter F of Chapter 101 of this title and are being adopted contemporaneously herewith in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the repeal.

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**CHAPTER 108. DIVISION FOR EARLY  
CHILDHOOD INTERVENTION SERVICES**

The Texas Health and Human Services Commission adopts changes to the rules of the Department of Assistive and Rehabilitative Services (DARS), in Title 40, Part 2, Chapter 108, relating to Division for Early Childhood Intervention Services. DARS adopts the repeal of Subchapter B, §108.65, concerning Opportunities for Citizen Participation. DARS also adopts the repeal of Subchapter C, §§108.85, 108.87, 108.89, and 108.91, concerning Early Childhood Intervention Advisory Committee, without changes to the proposed text as published in the May

11, 2007, issue of the *Texas Register* (32 TexReg 2609), and will not be republished.

The repeals are being adopted to facilitate consolidation and transfer of the substance of the repealed rules to Chapter 101 of this title, relating to Administrative Rules and Procedures, new Subchapter A, General Rules, §101.105, and new Subchapter D, Advisory Committees and Councils, §101.605. These new subchapters are being adopted contemporaneously elsewhere in this issue of the *Texas Register*.

DARS received no comments regarding the adoption of the repeals.

## **SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES**

### **40 TAC §108.65**

The repeal is adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER C. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE**

### **40 TAC §§108.85, 108.87, 108.89, 108.91**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

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## **CHAPTER 109. DEAF AND HARD OF HEARING SERVICES**

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 109, concerning Deaf and Hard of Hearing Services. DARS adopts the repeal of Subchapter A, Specialized Telecommunications Assistance Program, Division 1, Definitions, §§109.1, 109.3, 109.5 and 109.7 and Division 2, Program Eligibility, §§109.31, 109.33, 109.35, 109.37, 109.39, 109.41, 109.43 and 109.45. A new Subchapter A, General Rules, §109.101 and §109.103 and a new Subchapter D, Specialized Telecommunications Assistance Program, §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415 and 109.417 replaces the repealed sections. The rules are adopted without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2610) and will not be republished.

The title of Chapter 109 is changed from "Deaf and Hard of Hearing Services" to "Office for Deaf and Hard of Hearing Services."

The repeal, new rules, and chapter title change are being adopted to clarify and update program rules from the former Texas Commission for the Deaf and Hard of Hearing, which was consolidated into DARS in 2004, into rules applicable to programs now administered by the Office for Deaf and Hard of Hearing Services, DARS, as provided by House Bill 2292, 78th Legislature, Regular Session. Elsewhere in this issue of the *Texas Register*, DARS contemporaneously adopts the repeal of Chapter 109, Subchapter B, Division 7, Certified Court Interpreters, §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929 and 109.931.

DARS received no comments regarding the adoption of the repeal, the new rules, or the chapter title change.

## **SUBCHAPTER A. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM**

### **DIVISION 1. DEFINITIONS**

#### **40 TAC §§109.1, 109.3, 109.5, 109.7**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## DIVISION 2. PROGRAM ELIGIBILITY

### **40 TAC §§109.31, 109.33, 109.35, 109.37, 109.39, 109.41, 109.43, 109.45**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

### SUBCHAPTER A. GENERAL RULES

#### **40 TAC §109.101, §109.103**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

### **40 TAC §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415, 109.417**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services (DARS) in Title 40, Part 2, Chapter 109, concerning Deaf and Hard of Hearing Services. DARS adopts the repeal of Subchapter B, Division 7, Certified Court Interpreters, §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929, and 109.931, and adopts new Subchapter C, Certified Court Interpreters, §§109.301, 109.303, 109.305, 109.311, 109.313, 109.315, 109.321, 109.323, 109.325, 109.327, 109.329, 109.331, 109.333, 109.335, 109.337, 109.339, 109.341, 109.351, 109.353, 109.361, 109.363, 109.365, 109.367, 109.371, and 109.373, concerning certification of court interpreters, without changes to the proposed text as published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2613), and will not be republished.

The repeal and new rules are being adopted to conform the rules concerning certified court interpreters to current provisions of the Human Resources Code, Chapter 81, as amended through the 78th Legislative Session and as currently implemented following consolidation of the former Texas Commission for the Deaf and Hard of Hearing into the Department of Assistive and Rehabilitative Services; to provide updated information necessary for persons seeking to obtain and persons holding certification as court interpreters; and to remove details of program administration that do not affect applicants for and holders of court interpreter certification. In addition, as Government Code §57.027(a) provides that a person commits an offense if the person violates a rule adopted under Government Code Chapter 57, Subchapter B, the new rules clearly identify which of the rules are adopted under Government Code Chapter 57, Subchapter B and subject

to §57.027(a). Finally, the new rules establish a new requirement that an individual may not interpret a court proceeding or deposition unless properly qualified as court interpreter for that particular case, by presenting to the judge presiding, or to the court reporter at a deposition, proper evidence of court interpreter certification by either the Department or by the Registry of Interpreters for the Deaf. This new requirement is identified in the new rules as being adopted under Government Code Chapter 57, Subchapter B.

DARS received no comments regarding the adoption of the repeal or the new rules.

## **SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION**

### **DIVISION 7. CERTIFIED COURT INTERPRETERS**

**40 TAC §§109.901, 109.903, 109.905, 109.907, 109.909,  
109.911, 109.913, 109.915, 109.917, 109.919, 109.921,  
109.923, 109.925, 109.927, 109.929, 109.931**

The repeals are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

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## **CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES**

### **SUBCHAPTER C. CERTIFIED COURT INTERPRETERS**

**40 TAC §§109.301, 109.303, 109.305, 109.311, 109.313,  
109.315, 109.321, 109.323, 109.325, 109.327, 109.329,  
109.331, 109.333, 109.335, 109.337, 109.339, 109.341,  
109.351, 109.353, 109.361, 109.363, 109.365, 109.367,  
109.371, 109.373**

The new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 23, 2007.

TRD-200703187

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: September 1, 2007

Proposal publication date: May 11, 2007

For further information, please call: (512) 424-4050

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Proposed Rule Review

Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 164 concerning Hazardous Employer Program. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rule contained in this chapter no longer exists and; therefore, the repeal of this rule is recommended.

§164.4. Formulation of Accident Prevention Plan for Public Employers.

Comments regarding whether the reason for not adopting this rule continues to exist must be received by 5:00 p.m. on September 4, 2007 and submitted to Victoria Ortega, Legal Services, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200703216

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 25, 2007



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §12.688

**Table 1 - Determination of Amount of Penalty**

Points	Dollars	Points	Dollars	Points	Dollars
1	<u>550</u> [20]	25	<u>1,750</u> [500]	49	<u>7,750</u> [2,900]
2	<u>600</u> [40]	26	<u>2,000</u> [600]	50	<u>8,000</u> [3,000]
3	<u>650</u> [60]	27	<u>2,250</u> [700]	51	<u>8,250</u> [3,100]
4	<u>700</u> [80]	28	<u>2,500</u> [800]	52	<u>8,500</u> [3,200]
5	<u>750</u> [100]	29	<u>2,750</u> [900]	53	<u>8,750</u> [3,300]
6	<u>800</u> [120]	30	<u>3,000</u> [1,000]	54	<u>9,000</u> [3,400]
7	<u>850</u> [140]	31	<u>3,250</u> [1,100]	55	<u>9,250</u> [3,500]
8	<u>900</u> [160]	32	<u>3,500</u> [1,200]	56	<u>9,500</u> [3,600]
9	<u>950</u> [180]	33	<u>3,750</u> [1,300]	57	<u>9,750</u> [3,700]
10	<u>1,000</u> [200]	34	<u>4,000</u> [1,400]	58	<u>10,000</u> [3,800]
11	<u>1,050</u> [220]	35	<u>4,250</u> [1,500]	[59]	[3,900]
12	<u>1,100</u> [240]	36	<u>4,500</u> [1,600]	[60]	[4,000]
13	<u>1,150</u> [260]	37	<u>4,750</u> [1,700]	[61]	[4,100]
14	<u>1,200</u> [280]	38	<u>5,000</u> [1,800]	[62]	[4,200]
15	<u>1,250</u> [300]	39	<u>5,250</u> [1,900]	[63]	[4,300]
16	<u>1,300</u> [320]	40	<u>5,500</u> [2,000]	[64]	[4,400]
17	<u>1,350</u> [340]	41	<u>5,750</u> [2,100]	[65]	[4,500]
18	<u>1,400</u> [360]	42	<u>6,000</u> [2,200]	[66]	[4,600]
19	<u>1,450</u> [380]	43	<u>6,250</u> [2,300]	[67]	[4,700]
20	<u>1,500</u> [400]	44	<u>6,500</u> [2,400]	[68]	[4,800]
21	<u>1,550</u> [420]	45	<u>6,750</u> [2,500]	[69]	[4,900]
22	<u>1,600</u> [440]	46	<u>7,000</u> [2,600]	[70 and above]	[5,000]
23	<u>1,650</u> [460]	47	<u>7,250</u> [2,700]		
24	<u>1,700</u> [480]	48	<u>7,500</u> [2,800]		

**Figure: 16 TAC §26.130(g)(3)**

**Selecting a Telephone Company -- Your Rights as a Customer**

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

1. Pay, within five business days of your request, all charges associated with returning you to your original telephone company.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay, within 30 days, your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your authorized telecommunications provider (your original provider) and advising the company that you have been switched from its service without appropriate authorization ~~[the alleged unauthorized]~~. You should also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: [customer@puc.state.tx.us](mailto:customer@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

You can prevent slamming by requesting a preferred telephone company freeze from your current service provider. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.



Figure: 25 TAC §97.91(d)

SAMPLE DELEGATION FORM

DELEGATION OF AUTHORITY TO GIVE INFORMED CONSENT FOR IMMUNIZATIONS OF A MINOR	
I give permission for	
_____	
(Name of Adult to Whom Consent is Delegated)	
to consent for	
_____	DOB ____/____/____ to
(Name of Minor)	
receive the appropriate immunizations.	
Relationship of adult to minor: _____	
_____ Signature/Parent, Managing Conservator, Legal Guardian, or Authorized Person	____/____/____ Date of Signature
_____ Signature/Initials of Clinic Staff	____/____/____ Date of Immunization

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

### Notice of Extension of Deadline to Submit Proposals for Texas-Israel Exchange Fund Grant Program

The Texas Department of Agriculture (Department) is extending the deadline for submission of proposals for its Texas-Israel Exchange Fund Grant Program from September 6, 2007, to November 1, 2007. Proposals and signature pages must reach the Department and the Binational Agricultural Research and Development Fund (BARD) offices by November 1, 2007. The Request for Proposals (RFP) soliciting grant proposals for this program was published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4471). All other terms and requirements of the RFP remain the same.

Please contact Catherine Wright Steele at (512) 463-7700 or by e-mail at: catherine.wright-steele@tda.state.tx.us if you have any questions.

TRD-200703081

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: July 20, 2007



### Request for Proposals: Texans Feeding Texans--Surplus Agricultural Products Grant Program

**Statement of Purpose.** Pursuant to the Texas Agriculture Code, §§12.002, 12.007 and 21.001, the Texas Department of Agriculture (TDA) hereby requests proposals for projects, for the period October 1, 2007 through August 31, 2009, that collect and distribute surplus Texas agricultural products to food banks and other charitable organizations that serve needy or low-income individuals. For purposes of this request for proposals, the term "Texas agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; and (4) wildlife processed for food or by-products. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals.

**Eligibility.** Grant proposals will be accepted from non-profit organizations that have a 501 (c) (3) IRS designation. These organizations must be established and operate under religious, charitable or educational purposes and not financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least 5 years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties of this state.

**Funding Limitations.** Proposals are limited to \$1,000,000 per year for a total possible biennial budget of \$2,000,000. Funding is limited

to the operation of a program that coordinates the collection and transportation of surplus Texas agricultural products to a statewide network of food banks that provide food to the needy or low-income individuals.

**Matching Requirements.** There are no matching requirements for this grant program.

**Eligible Expenses.** Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;
2. Travel - in-state only and incurred by grant personnel on official grant-related business;
3. Equipment - nonexpendable, tangible personal property having a useful life of more than one year and costs \$5,000 or more;
4. Supplies and direct operating expenses - equipment that costs less than \$5,000, office supplies, postage, telecommunications, printing, fidelity bond, packaging, collection, transportation, etc.; and
5. Indirect costs - no more than 10%.

**Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

1. Alcoholic beverages;
2. Entertainment;
3. Contributions - charitable or political;
4. Fundraising;
5. Expenses falling outside of the contract period;
6. Expenses for expenditures not specifically listed in the project budget; and
7. Expenses that are not adequately documented.

**Submission Requirements.** Each proposal may not exceed six (6) pages and must include the following criteria:

1. Cover sheet with project title, name, title, address, telephone and fax numbers, and email address of the individual designated as the point of contact.
2. Project summary, not to exceed one page.
3. Identification of the key personnel to be involved in the project, including information on their experience.
4. Measurable goals - a description of realistic goals that are measurable and potentially attainable.
5. Evaluation plan - a description of the method(s) to be used to determine the success of the project.
6. Work plan - a description of how the collection and distribution of surplus agriculture products will be accomplished.

7. Project budget - must be detailed with year 1 and year 2 expenditures and include justification for proposed line item expenditures.

**Reporting Requirements.** Upon award, the following reports will be required:

1. Narrative reports on a quarterly basis from one to three pages in length detailing accomplishments of project objectives for the time periods specified in the award document.

2. Final compliance narrative report shall be due either upon completion of the project or thirty (30) days after the termination of the grant project, whichever occurs first. The final report shall contain:

(a) A project summary - history of the project, objectives, importance, effort, and results;

(b) Details pertaining to the measured goals and project evaluation;

(c) A description of the successes, challenges, and any limitations; and

(d) A description of future plans - include how the project will continue after the grant is expended and how additional funding may address expansion efforts.

3. Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award funds spent to date.

**General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

3. Awarded grant projects must remain in full compliance or be subject to termination at the discretion of TDA.

4. Upon grant award, TDA shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

5. Audit requirements will be in accordance with the State of Texas Single Audit Circular Section 200. In any year in which a financial audit is conducted, a copy must be submitted to TDA within 30 days upon receipt, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

6. In accordance with Texas Government Code Ann. §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees will be provided a copy or it may be downloaded from: <http://www.governor.state.tx.us/divisions/stategrants/files/UGMS062004.doc>

7. Grantees must adhere to the state and federal regulations pertaining to the movement of Texas agriculture products.

**Deadline and Submission Information.** Proposals should be submitted to Catherine Wright Steele, Grants and Special Projects Coordinator Governmental Affairs Liaison, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. August 31, 2007. Fax copies will not be accepted.

Please contact Catherine Wright Steele at (512) 463-7700 or by email at [catherine.wright-steele@tdaagr.state.tx.us](mailto:catherine.wright-steele@tdaagr.state.tx.us) with any questions you may have.

**Evaluation and Award Information.** All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. Additionally, TDA reserves the right to accept or reject any or all proposals submitted and is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. All final funding decisions will be made by TDA.

TRD-200703190

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: July 24, 2007

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**Office of the Attorney General**

**Notice of Settlement of a Texas Solid Waste Disposal Enforcement Action**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and State of Texas v. Carl E. Poteet, et al., Cause No. 2005-51200, 165th Judicial District of Harris County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act at a wood recycling site in Harris County, Texas. The defendants are Carl and Sherrill Poteet. The suit seeks civil penalties, injunctive relief, attorney's fees, and court costs for operating an illegal municipal solid waste site.

Nature of Settlement: The settlement awards the State and Harris County a \$43,750 civil penalty, \$18,750 of which may be forgiven upon compliance with the injunctive provisions of the judgment. The proposed judgment's injunctive provisions require the Poteets to remove remaining waste and to cease operating mulching and composting sites. The settlement also awards the State and Harris County a total of \$13,400 in attorney's fees.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For questions regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.*

TRD-200703082

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: July 20, 2007  
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## Notice Regarding Private Real Property Rights Preservation Act Guidelines

In 1995, the Legislature enacted the Private Real Property Rights Preservation Act (Act), Texas Government Code Chapter 2007. As required by the Act, the Office of the Attorney General prepared guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. The guidelines were first published in 1996 in the January 12, 1996 issue of the *Texas Register* (21 TexReg 387). The Act requires that the Office of the Attorney General review the guidelines at least annually and revise them as necessary. The guidelines are available at [www.oag.state.tx.us/AG\\_Publications/txts/propertyguide2005.shtml](http://www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml). The most recent revision was in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7911).

The Office of the Attorney General has begun its annual review and invites comments, suggestions, or information on whether the guidelines are consistent with the decisions of the United States and Texas supreme courts from June 1, 2006 through June 30, 2007. Any comments must be submitted no later than September 25, 2006. Please address comments to Jeb Boyt, Assistant Attorney General, Administrative Law Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78701-2548, or at [jeb.boyt@oag.state.tx.us](mailto:jeb.boyt@oag.state.tx.us) or via facsimile at (512) 320-0167. The Office of the Attorney General will review any comments submitted and will publish notice of any revisions to the guidelines later this year.

TRD-200703217

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: July 25, 2007



## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 13, 2007, through July 19, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 25, 2007. The public comment period for this project will close at 5:00 p.m. on August 24, 2007.

#### FEDERAL AGENCY ACTIONS:

**Applicant: BP Exploration and Production, Inc.;** Location: The Gulf of Mexico (GOM) Fiber Optic Cable (FOC) network extends just south of latitude 27 degrees N in Galveston District waters until it turns northward near East Breaks 731, at approximately latitude 28.2287 degrees N; longitude 94.5906 degrees W. The FOC will make landfall near the Freeport, Texas area latitude 28.9133 degrees N; longitude 95.3420 degrees W for a total route distance of 310 km (193 miles) within the Galveston District. The Project Area involves Galveston,

Chambers, Jefferson, and Brazoria Counties, Texas. Project Description: The applicant is proposing to install a 1,166 km (725-mile) FOC network within the GOM extending from the southeastern coast of Mississippi to the northeastern coast of Texas. The GOM FOC network will provide offshore oil and gas facilities with an environmentally robust, real time, reliable, redundant, high-speed, broadband, state of the art telecommunications network to service the offshore oil and gas industry in the GOM.

This specific permit application applies to the portion of the FOC that is to run from Quintana Beach, Texas (Brazos Area, Block 378) to Garden Banks Block 971 for a total network distance of approximately 310 km (193-miles) within Galveston District boundaries. In Freeport, the GOM FOC onshore construction (oriented to avoid all wetlands) would begin at the proposed beach manhole (BMH) which would be located near the northwest corner of a levee (berm) that surrounds the old Phillips Petroleum drilling material deposition site [now owned by the Texas General Land Office (GLO)] adjacent to CR 723 in Freeport, Brazoria County, Texas. The GOM FOC network would be connected to the BP FOC network infrastructure at the terminal station building.

The BMH would be a subterranean vault-like structure that houses the splice linking the terrestrial FOC with the submarine FOC. The FOC would continue seaward via a horizontal directionally drilled (HDD) bore pipe conduit that would be installed approximately 30 feet below the existing ground elevation and seafloor surface and exit approximately 4,920 feet at latitude 28.9052 degrees N; longitude 95.3297 degrees W into the GOM. Construction would involve building a 150 by 100-foot construction pad and a 20 by 20-foot access road from CR 723 to the berm. The applicant would use this construction pad to position the equipment for the HDD bore operation and FOC installation.

The FOC will cross the following State Water Lease Block Areas within the Galveston District: Brazos Small Blocks - BA376, BA377, BA378, BA384, BA385, BA387, and BA401. The FOC will cross the following Federal Waters Lease Block Areas within the Galveston District: Brazos Area - BA309; Galveston - GA310, GA334, GA343, GA344, GA361, GA362, GA381, GA392, GA393, GA421, GA422, and GA425.

Galveston Area Addition - GAA55, GAA56, GAA60, GAA61, GAA78, GAA90, GAA91, GAA105, GAA106, GAA122, GAA134, GAA135, GAA153, GAA154, GAA163, GAA184, GAA185, GAA191, GAA192, GAA216, GAA220, GAA221, GAA247, GAA248. East Breaks - EB115, EB116, EB160, EB203, EB204, EB247, EB291, EB335, EB379, EB422, EB423, EB465, EB466, EB509, EB553, EB596, EB597, EB641, EB685, EB729, EB730, EB731, EB775, EB776, EB777, EB778, EB779, EB780, EB781, EB825, EB826, EB827, EB871, EB872, EB916, EB917, EB918, EB962, EB964, EB965.

Garden Banks - GB925, GB969, GB970, and GB971.

The portion of the GOM FOC network within the Galveston District will cross safety fairways two times. With the fairways, cable will be buried 10 feet below the seafloor. The planned safety fairway crossings area are as follows: First crossing of the safety fairway will occur on Lease Block GA362 to GA361 between coordinates latitude 28.7049 degrees N; longitude 95.2029 degrees W in waters 75 feet deep. The second crossing will occur in Lease Block EB247 to EB291 between coordinates latitude 27.7224 degrees N; longitude 94.6000 degrees W and latitude 27.6882 degrees N; longitude 94.6087 degrees W in water 1,355 feet deep. CCC Project No.: 07-0237-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-884 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commis-

sion on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Boss Operating Company, LLC;** Location: The project is located in Corpus Christi Bay, approximately 4.9 miles WSW of Port Aransas in State Tract (ST) 345, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: PORT INGLESIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683,345; Northing: 3,078,546. Project Description: The applicant proposes to drill 2 wells, Wells No. 2 and 3, ST 345, and place structures for the development of petroleum resources. Approximately 32,000 square feet of shell, crushed rock, or washed gravel will be used as a base for the proposed drilling rig and production facility. The proposed surface location positions were selected to avoid impacts to sensitive resources as well as maintain sufficient distance (over 1,000 feet) from potential rookery activity at Pelican Island. Associated production pipelines will be tied into an existing pipeline immediately north of the well sites. CCC Project No.: 07-0241-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-859 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Seadrift Ranch Partners, Ltd.;** Location: The project is located south of Seadrift, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Mosquito Point and Seadrift, Texas. Approximate UTM Coordinates for center of site in NAD 27 (meters): Zone 14N; Easting: 726139.843; Northing: 3138927.017. Project Description: The applicant is proposing to construct two marinas, associated inland canals, and access channels to provide recreational boat access for a 700-acre waterfront residential community. As explained below, the proposed project entails excavation and dredging to provide access to the Victoria Barge Canal (VBC) and San Antonio Bay, but will result in less than 0.01 acre of impact to wetlands and less than 0.01 acre of impact to seagrasses.

The residential development will be constructed entirely on the uplands. The marinas and inland canals will also be excavated entirely in the uplands. The construction of two access channels that will provide boat access to the VBC will not impact wetlands or seagrass beds. The construction of a third channel into San Antonio Bay to provide adequate flushing and circulation for the proposed marinas and canals will impact 306 square feet (less than 0.01 acre) of fringe wetlands and 155 square feet (less than 0.01 acre) of seagrasses. The applicant is not proposing to place any structures into San Antonio Bay or the VBC, so these channels will not obstruct navigation for any vessels utilizing either waterbody.

Approximately 2,500,000 cubic yards of uplands will be excavated for the marinas and inland canals. Approximately 7,000 cubic yards of bay bottom material is proposed to be excavated from the San Antonio Bay and the VBC for the three channels. The applicant proposes to mechanically excavate the channels with a dragline or long reach excavator mounted on a barge. The excavated material will then be barged to land and loaded into a truck. The truck will deliver the excavated material to the project site, and it will be spread and incorporated into the residential portion of the site as fill.

The only direct impacts to fringe wetlands and seagrasses (less than 0.01 acre of each) will occur in connection with the construction of Channel A (the flushing channel). The applicant's plans for the construction of Channel C include creating a minimum 0.5-mile stretch of saltwater fringe wetlands and facilitating the natural establishment of more than 35 acres of salt marsh. Except for necessary bulkheading at the channel entrance to prevent erosion, no bulkhead structures will

be installed along the southern side of Channel C. Natural slope grading will be implemented on the southern shoreline of the channel to create from 0.50 to 0.75 mile of new saltwater fringe wetland habitat. This design will enable the natural establishment of a minimum of 36.5 acres of salt marsh along the southern shoreline of the access channel. The slope will be designed to direct boat traffic at least 100 feet from of the newly created wetlands. Additionally, channel markers will be installed to visually define this boundary to boat traffic. CCC Project No.: 07-0251-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-310 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200703195

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: July 24, 2007

## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period June 2007, as required by Tax Code, §202.058, is \$55.85 per barrel for the three-month period beginning on March 1, 2007, and ending May 31, 2007. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2007, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period June 2007, as required by Tax Code, §201.059, is \$6.16 per mcf for the three-month period beginning on March 1, 2007, and ending May 31, 2007. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2007, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200703148

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 23, 2007

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Notice of Intent to Renew Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, Section 403.011, Texas Government Code, and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces this notice of intent to renew an existing investment consulting contract as follows.

The Comptroller provides this notice of intent to renew the contract with New England Pension Consultants, Inc., located at One Main Street, Cambridge, Massachusetts 02142. The total amount of the contract is estimated not-to-exceed \$160,000.00 for FY08. The contract was executed on September 28, 2003. The term of the contract is September 28, 2003, through August 31, 2007, with one (1) additional one year option to renew, one year at a time.

On July 24, 2007, the Board authorized the exercise of the first option to renew the contract for the period from September 1, 2007, through August 31, 2008. The original notice of request for proposals (RFP #157a) was published in the June 27, 2003, issue of the *Texas Register* (28 TexReg 4964).

The consultant will advise and assist the Comptroller by providing investment consulting services to the Board, to include quarterly reports due within sixty days after the end of each quarter. The Consultant will provide other reports as required by the Board throughout the 2008 fiscal year.

TRD-200703214

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 25, 2007

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Notice of Intent to Renew Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to renew and extend a major consulting services contract in connection (previously bid under RFP No. 173a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services for the coming fiscal year in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract with Analytical Systems, Inc., 20 Colony Park Circle, P.O. Box 3041, Galveston, Texas 77551-3041, is being renewed and will be amended effective September 1, 2007, through August 31, 2008. The total amount of this contract is not-to-exceed \$30,000.00. The original term of the contract is December 7, 2005 through August 31, 2007. The reports submitted under this contract will be due on or before August 31, 2008.

The notice of request for proposals (RFP #173a) was first published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5046).

TRD-200703215

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 25, 2007

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Chapters 403 and 2305, Section 2305.037, Texas Government Code; and Rider 15, House Bill 1 (H.B.1), 80th Texas Legislature, Reg. Sess. (2007), the State Energy Conservation Office (SECO) of the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #180a) from qualified, independent firms and institutions to provide technical assistance and consulting services to SECO and Comptroller to prepare a new, updated comprehensive statewide renewable energy assessment report (Report) and provide related services. Comptroller reserves the right to select multiple consultants to participate in the preparation of the Report, as further detailed in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 7, 2007, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, August 3, 2007, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: <http://esbd.tbpc.state.tx.us> after 10 a.m. (CZT) on Friday, August 3, 2007.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on Friday, August 10, 2007. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, August 17, 2007, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, August 28, 2007. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 3, 2007, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - August 10, 2007, 2 p.m. CZT; Official Responses to Questions Posted - August 17, 2007, or as soon thereafter as practical; Proposals Due - August 28, 2007, 2 p.m. CZT; Contract Execution - September 7, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 7, 2007, or as soon thereafter as practical.

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**Public Notice of Court Costs and Fees**

Texas Government Code, §51.607, requires the Comptroller of Public Accounts (comptroller) to publish a list of all court costs and fees imposed or changed during the most recent regular session of the Legislature. This section also provides that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until the January following the effective date of the law, unless the bill makes a specific exception. If the bill takes effect before August 1 or after January 1, then the court cost or fee takes effect upon the effective date of the bill.

The listing of court costs and fees to be identified and published as required by Government Code, §51.607, are as follows:

**House Bill 8, Sexual Abuse of a Child Fee**

Effective January 1, 2008. House Bill 8, known as the Jessica Lunsford Act, relates to the prosecution, punishment, and supervision of certain sex offenders.

The bill amends Code of Criminal Procedure, §102.0186(a), by adding continuous abuse of a child to the list of offenses under which a person is required to pay a \$100 cost upon conviction. These costs are deposited in the child abuse prevention fund that is administered by the county.

**House Bill 530, Drug Court Cost Fee**

Effective June 15, 2007. House Bill 530 adds Code of Criminal Procedure, Article 102.0178 and Government Code, Article 102.0215, to create a court cost of \$50 on conviction of an offense punishable as a Class B misdemeanor or higher for certain intoxication and drug convictions. The county or municipality shall remit the collected funds to the comptroller quarterly. If the county or municipality remits the funds on a timely basis, the county or municipality may retain 10% of the total funds collected quarterly as a service fee. If the county or municipality has established a drug court program, the county or municipality may retain an additional 50% of the funds collected to be used exclusively for drug court programs operated within the respective jurisdiction. The comptroller shall deposit remitted funds to the drug court account in the general revenue fund to help fund applicable drug court programs. Counties with populations of more than 200,000 (formerly set at more than 550,000) must establish a drug court program, provided they receive federal or state funding for that purpose.

**House Bill 764, Family Protection Fee**

Effective June 15, 2007. House Bill 764 amends Government Code, §51.961, reducing the Family Protection Fee from \$30 to \$15. The bill repeals Government Code, §51.961(g), which eliminates the requirement that county or district clerks remit one-half of the fee to the comptroller for deposit into the Child Abuse and Neglect Prevention Trust. Attorney General Opinion GA-0387 found the state portion of the fee to be unconstitutional.

**House Bill 1267, Indigent Defense Court Cost**

Effective January 1, 2008. House Bill 1267 adds Government Code, §102.023, to create a new \$2 court cost for indigent defense. The fee applies to any offense other than an offense relating to a pedestrian or parking. The fee will apply in all municipal, justice, county, and

district court convictions. The fee is to be remitted quarterly to the comptroller for deposit to the fair defense account to be used to fund indigent defense representation.

**House Bill 1295, Supplemental Court-initiated Guardianship Fee**

Effective January 1, 2008. House Bill 1295 creates a supplemental court-initiated guardianship fee for the support of the judiciary in cases involving guardianships under Texas Probate Code, §683. The court clerk shall collect the \$20 fee, which the court imposes in certain probate original actions and adverse probate actions. The fee must be deposited into the county treasury to provide supplemental funding for compensation of court-appointed guardians ad litem and court-appointed attorneys ad litem and to fund local guardianship programs for indigent incapacitated persons.

**House Bill 1623, Administrative Fees for Dismissal of Certain Violations**

Effective January 1, 2008. House Bill 1623 creates administrative fees and increases others relating to the dismissal of certain Transportation Code and Parks & Wildlife Code violations. The fees apply when a defendant demonstrates that corrective action has been taken and the court chooses to dismiss the charge.

The bill creates an administrative fee not to exceed \$10 for the dismissal of a violation for the operation of a vehicle without a license plate or registration insignia by adding Transportation Code, §502.404(f) and (g).

The bill increases the administrative fee for dismissal of a charge of driving with an expired motor vehicle registration from not to exceed \$10 to not to exceed \$20 by amending Transportation Code, §502.407(b).

The bill creates an administrative fee not to exceed \$10 for the dismissal of a violation for the operation of a vehicle with a wrong, fictitious, altered, or obscured license plate by adding Transportation Code, §502.409(c).

The bill adds Transportation Code, §521.025(f), to create an administrative fee not to exceed \$10 for the dismissal of a violation for failing to carry a license and exhibit it on demand.

The bill increases the administrative fee for dismissal of a charge of driving with an expired license from not to exceed \$10 to not to exceed \$20 by amending Transportation Code, §521.026.

The bill adds Transportation Code, §521.054 (d), to create an administrative fee not to exceed \$20 for the dismissal of a violation of failing to change address or name on a drivers license.

The bill adds Transportation Code, §521.221(d), to create an administrative fee not to exceed \$10 for the dismissal of a violation of operating a vehicle in violation of a restriction imposed or without the endorsement required on the license issued to that person.

The bill adds Transportation Code, §547.004(c) and (d), to create an administrative fee not to exceed \$10 for the dismissal of the violation of operation, or allowing the operation, of a vehicle that is unsafe or not in compliance with vehicle standards and requirements or that is equipped in a prohibited manner.

The bill amends Transportation Code, §548.605(b), to increase the administrative fee for dismissal of a charge of driving with an expired inspection certificate from not to exceed \$10 to not to exceed \$20.

The bill adds Parks and Wildlife Code, §31.021(f), to create an administrative fee not to exceed \$10 for the dismissal of a violation for the operation of a vessel with an expired certificate of number.

House Bill 2151, Juvenile Delinquency Prevention and Graffiti Eradication Fee

Effective January 1, 2008. Code of Criminal Procedure, Article 102.0171(a), is amended to increase the local court cost from \$5 to \$50 for the graffiti offense in Penal Code, §28.08. The fee applies in constitutional and statutory county courts and district courts.

House Bill 2949, Teen Court Dismissal Fee in the Texas Louisiana Border Region

Effective January 1, 2008. House Bill 2949 allows juvenile, justice, and municipal courts in the Texas-Louisiana border region, which is defined by Government Code, §2056.002, to charge a \$20 fee for the dismissal of a misdemeanor charge upon the completion of a teen court program. This is a new fee in addition to the fees previously authorized for teen court programs.

Senate Bill 325, Ninth Court of Appeals District Appellate Judicial System Support Fee

Effective January 1, 2008. Senate Bill 325 adds Government Code, §22.2101, to create an appellate judicial system for the Ninth Court of Appeals District. To fund the system, the county commissioners court in each county in the 9th District is required to set a court fee of \$5 for each civil suit filed in county court, county court at law, probate court, or district court in the county. The court costs fee does not apply to a suit filed by the county or to a suit for delinquent taxes.

Senate Bill 600, Judicial Support Fee and Judicial Fund

Effective January 1, 2008. Senate Bill 600 amends Local Government Code, §133.105 and §102.022, to increase the criminal court cost for Judicial Support Fee from \$4 to \$6. The bill amends Local Government Code, §133.154 and Government Code, §101.062 and §101.083, to increase the civil filing fee for Judicial Support from \$37 to \$42.

Senate Bill 1412, Civil Suits in Justice of the Peace Courts and Small Claims Court

Effective January 1, 2008. Senate Bill 1412 revises the civil suit filing fees in justice courts and small claims courts. It increases the fee for services rendered before judgment from \$15 to \$25 in justice court and from \$10 to \$25 in small claims courts. The bill amends Government Code, §101.141, and Local Government Code, §118.121.

Senate Bill 1083, Driving Records Fee

Effective January 1, 2008. Code of Criminal Procedure, Article 45.0511, is amended related to the fee for requesting a driving record when a defendant has requested a driving safety course or motorcycle operator training course dismissal. The court may charge the defendant the \$10 fee established by Transportation Code, §521.048, and the TexasOnline Fee that is currently \$12, for a total of \$22.

TRD-200703196

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 24, 2007

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 30, 2007 - August 5, 2007 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 30, 2007 - August 5, 2007 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of August 1, 2007 - August 31, 2007 is 8.25% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of August 1, 2007 - August 31, 2007 is 8.25% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200703186

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 23, 2007

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Annona; DOCKET NUMBER: 2007-0411-MWD-E; IDENTIFIER: RN101721132; LOCATION: Red River County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit



Number WQ0014255001, Final Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0014255001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: \$4,830; Supplemental Environmental Project (SEP) offset amount of \$3,864 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-up; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: AT Holding-Copper Ridge, LLC; DOCKET NUMBER: 2007-0492-EAQ-E; IDENTIFIER: RN105162580; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: construction site for commercial buildings; RULE VIOLATED: 30 TAC §213.23(h), by failing to re-apply and receive approval for a contributing zone plan (CZP); PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Richard B. Barkley; DOCKET NUMBER: 2007-0185-WOC-E; IDENTIFIER: RN103279188; LOCATION: Spring, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.331(b) and the Code, §26.0301 and §37.003, by failing to obtain a wastewater treatment operator license prior to performing activities as a wastewater treatment operator; PENALTY: \$188; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Big Tex Trailer Manufacturing, Inc.; DOCKET NUMBER: 2007-0589-AIR-E; IDENTIFIER: RN100214568; LOCATION: Mount Pleasant, Titus County, Texas; TYPE OF FACILITY: trailer manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 33646, General Condition 8, and Texas Health & Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emission rates of Air Permit Number 33646; 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; and 30 TAC §116.115(c) and (b)(2)(E), Air Permit Number 33646, Special Conditions 3 and 17(B) and (C), and THSC, §382.085(b), by failing to comply with labeling and record keeping requirements; PENALTY: \$35,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Blakelee Builders, Inc.; DOCKET NUMBER: 2007-0714-WQ-E; IDENTIFIER: RN105197800; LOCATION: Tuscola, Taylor County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: City of Bonham; DOCKET NUMBER: 2007-0367-PWS-E; IDENTIFIER: RN102546108; LOCATION: Bonham, Fannin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4), TCEQ Agreed Order Docket Number 2003-0312-MLM-E, and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$2,970; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Bulverde Area Rural Library District; DOCKET NUMBER: 2007-0472-EAQ-E; IDENTIFIER: RN105161939; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: library construction site; RULE VIOLATED: 30 TAC §213.23(a)(1)(A) and (B), by failing to obtain approval of modifications to an Edwards Aquifer CZP; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-0404-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.201(a)(1)(B), 101.201(b)(1)(D), and 101.201(b)(1)(H) and THSC, §382.085(b), by failing to timely report an emission event; 30 TAC §116.115(b)(2)(F) and §116.115(c), New Source Review Permit Number 21101, Special Condition 8, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; and 30 TAC §101.201(b)(1)(D) and §101.201(b)(1)(H) and THSC, §382.085(b), by failing to identify the correct agency established emission point number and the correct authorized emissions limit for Flare 24 on the final report; PENALTY: \$7,128; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Colorado City; DOCKET NUMBER: 2007-0366-MWD-E; IDENTIFIER: RN102182557; LOCATION: Mitchell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1) and Water Quality Permit Number WQ0010077001, Permit Condition Number 2.d., by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(1) and Water Quality Permit No. WQ0010077001, Operational Requirement Number 1, by failing to adequately maintain the treatment facility; and 30 TAC §305.125(1) and Water Quality Permit Number WQ0010077001, Special Provision Number 7, by failing to maintain a minimum of two feet of freeboard in the holding ponds; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(10) COMPANY: City of Covington; DOCKET NUMBER: 2007-0188-MWD-E; IDENTIFIER: RN101920080; LOCATION: Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 12279001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number 12279001, Monitoring and Reporting Requirements Number 1, by failing to timely submit to the TCEQ parameter data during the month of July 2006 for the pH maximum; PENALTY: \$14,145; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Crockett; DOCKET NUMBER: 2006-0478-MSW-E; IDENTIFIER: RN102143054; LOCATION: Crockett, Houston County, Texas; TYPE OF FACILITY: recycling center/transfer station; RULE VIOLATED: 30 TAC §330.9(f) (formerly 30 TAC §330.4(q)), by failing to obtain a registration or other authorization from the TCEQ for a material recovery facility; 30 TAC §330.233(a) and §332.4(2) (formerly 30 TAC §330.120), by failing to comply with general requirements for composting facilities and comply with litter control; 30 TAC §330.121(a) (formerly 30 TAC §330.111(a)), by failing to comply with the site operating plan; 30 TAC §330.125(b)(7) (formerly 30 TAC §330.150(2)), by failing to maintain records for

financial assurance; and 30 TAC §324.6 and §324.7 and 40 CFR §279.31(b)(1) and §279.32(b), by failing to comply with generator requirements for used oil; PENALTY: \$3,288; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Dallas County Utility & Reclamation District; DOCKET NUMBER: 2007-0623-MWD-E; IDENTIFIER: RN102335940; LOCATION: Dallas County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13678001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: \$4,340; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Peter Wilfridus de Ridder dba de Ridder Dairy; DOCKET NUMBER: 2007-0552-AGR-E; IDENTIFIER: RN101522233; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board (TSSWCB); 30 TAC §21.4 and the Code, §5.702 and §26.0135(h), by failing to pay outstanding consolidated water quality fees and associated late fees; 30 TAC §321.39(f)(24)(B), by failing to store stockpiled manure in a well drained area with no ponding of water and in a contained area where contaminated runoff would be retained on site; and 30 TAC §321.49(f), by failing to timely submit soil sample results; PENALTY: \$3,542; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: East Central Independent School District; DOCKET NUMBER: 2007-0637-MWD-E; IDENTIFIER: RN101525178; LOCATION: Bexar County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13701001, Effluent Limitations and Monitoring Requirement Numbers 2 and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(1) and TPDES Permit Number 13701001, Monitoring and Reporting Requirements, by failing to submit discharge monitoring report (DMR) parameter data; PENALTY: \$1,650; Supplemental Environmental Project (SEP) offset amount of \$1,320 applied to Audubon Society-Mitchell Lake Project; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: El Paso Water Utilities Public Service Board; DOCKET NUMBER: 2007-0576-PST-E; IDENTIFIER: RN100816651; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: golf course with active underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Chris Holcomb, (512) 239-2541; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: Emerald Valley Independent Aquatic Network, Ltd. Co.; DOCKET NUMBER: 2007-0658-PWS-E; IDENTIFIER: RN101439768; LOCATION: Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i), by failing to provide a minimum well production capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.41(c)(3)(N), by failing to provide an operable flow measuring device on the discharge line; and 30 TAC §290.46(v), by failing to install all electrical wiring in compliance with local or national electrical

codes; PENALTY: \$364; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Fairway Leasing, L.L.C.; DOCKET NUMBER: 2007-0531-EAQ-E; IDENTIFIER: RN105186456; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: leasing company for commercial buildings; RULE VIOLATED: 30 TAC §213.23(h), by failing to re-apply and receive approval for a CZP prior to initiating construction as a new property owner; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Todd Farber dba Garden Guy, Inc.; DOCKET NUMBER: 2007-0671-LII-E; IDENTIFIER: RN105071898; LOCATION: Missouri City, Fort Bend County, Texas; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to possess a valid irrigator license; PENALTY: \$262; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of Godley; DOCKET NUMBER: 2007-0555-PWS-E; IDENTIFIER: RN101183135; LOCATION: Godley, Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide the system with two or more wells with a total well capacity of 0.6 gpm per connection or an approved interconnection which can supply at least 0.35 gpm per connection in the event of an emergency; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual; 30 TAC §290.44(h), by failing to conduct an annual inspection, tested by a certified backflow prevention assembly tester, on all backflow prevention assemblies; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance; and 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: \$935; ENFORCEMENT COORDINATOR: Thomas Barnett, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Billy Hilton; DOCKET NUMBER: 2007-0709-MLM-E; IDENTIFIER: RN105128342; LOCATION: New Braunfels, Guadalupe County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(c) and the Code, §26.121(a)(1), by failing to prevent the disposal of municipal solid waste at an unauthorized site; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2007-0360-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) O-02288, Special Terms and Conditions Number 16, New Source Review (NSR) Permit 19823, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,925; Supplemental Environmental Project (SEP) offset amount of \$3,962 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Iola Water Company, Inc.; DOCKET NUMBER: 2007-0880-PWS-E; IDENTIFIER: RN102816345; LOCATION: Iola, Grimes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: \$755; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 7671007826, (254) 751-0335.

(23) COMPANY: James Thomas Traweek dba Jam-Dot Dairy; DOCKET NUMBER: 2007-0530-AGR-E; IDENTIFIER: RN101517134; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$1,860; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951 (817) 588-5800.

(24) COMPANY: City of Lacy Lakeview; DOCKET NUMBER: 2007-0354-MLM-E; IDENTIFIER: RN101388650; LOCATION: Lacy Lakeview, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain the distribution system line in a watertight condition; 30 TAC §290.42(e)(4)(A), by failing to provide a bottle of fresh ammonia solution for testing for chlorine leakage; 30 TAC §290.43(e), by failing to provide a properly constructed intruder-resistant fence; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap; 30 TAC §290.46(f)(2), by failing to provide water system records for review at the time of the investigation; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.5 milligram per liter (mg/L) total chlorine or 0.2 mg/L free chlorine; 30 TAC §290.46(n)(2), by failing to provide an up-to-date distribution map; 30 TAC §290.46(j), by failing to provide documentation of Customer Service Inspection certificate prior to providing continuous water service to the new connection; 30 TAC §290.46(h), by failing to have a supply of calcium hypochlorite disinfectant available; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gpm per connection; 30 TAC §290.42(l), by failing to maintain a facility operations manual for operator review and reference; and 30 TAC §288.30(5), by failing to develop a drought contingency plan for the water system; PENALTY: \$10,053; Supplemental Environmental Project (SEP) offset amount of \$8,043 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Gerben Leyendekker dba Leyendekker Dairy Farm; DOCKET NUMBER: 2007-0527-AGR-E; IDENTIFIER: RN102093929; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; and 30 TAC §5.702, by failing to pay late fees; PENALTY: \$2,060; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Marine Quest-Hidden Cove, L.P.; DOCKET NUMBER: 2007-0496-MWD-E; IDENTIFIER: RN102094950; LOCATION: The Colony, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013785001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a),

by failing to comply with the permit effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013785001, Sludge Provisions, by failing to submit monitoring results; PENALTY: \$8,100; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Mobil Chemical Company Inc.; DOCKET NUMBER: 2007-0259-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), Air Permit Number 7799/PSD-TX-860, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$40,700; Supplemental Environmental Project (SEP) offset amount of \$20,350 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: City of Morgan's Point; DOCKET NUMBER: 2007-0564-MWD-E; IDENTIFIER: RN102075801; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10779001, Effluent Limitations and Monitoring Requirement Number 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; 30 TAC §305.125(17) and TPDES Permit Number 10779001, Sludge Provisions, by failing to timely submit monitoring results; and 30 TAC §305.125(17) and TPDES Permit Number 10779001, Monitoring and Reporting Requirements Number 1, by failing to submit the DMR parameter data for flow daily maximum; PENALTY: \$7,976; Supplemental Environmental Project (SEP) offset amount of \$6,381 applied to Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Northeast Washington County Water Supply Corporation; DOCKET NUMBER: 2007-0349-PWS-E; IDENTIFIER: RN101266138; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(C), by failing to employ at least two operators who hold a Class C or higher license; 30 TAC §290.46(f)(2), by failing to provide water system records at the time of the investigation; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date facility operations manual; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate; 30 TAC §290.46(m), by failing to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.42(e)(4)(B), by failing to house the gas chlorination equipment and chlorine cylinders at wells 1, 3, and 4 so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.46(m)(4), by failing to maintain all distribution lines, water storage, and pressure maintenance facilities, and all related appurtenances in a watertight condition; 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from occupying the area within 50 feet of well five; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block on wells 1 and 2; 30 TAC §290.43(c)(3), by failing to maintain well two in accordance with American Water Works Association (AWWA) standards by failing to provide a hinged flap cover on the overflow of ground storage tank two that closes tightly and without a gap greater than 1/16th of an inch; 30 TAC §290.43(c)(4), by failing to maintain well two in accordance with AWWA standards by failing to provide a functioning liquid level indicator on ground storage tank one; 30 TAC §290.43(c)(2),

by failing to maintain well four in accordance with AWWA standards by failing to provide a lockable roof hatch on the backwash tank; and 30 TAC §290.42(b)(2)(C), by failing to maintain well four in accordance with AWWA standards by failing to provide an intact 16-mesh or finer corrosion-resistant screen on the aerator; PENALTY: \$3,727; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Randy Earl Wyly dba Randy Wyly dairy and dba Randy Wyly Dairy 2; DOCKET NUMBER: 2007-0529-AGR-E; IDENTIFIER: RN102065166 and RN101523090; LOCATION: Erath County, Texas; TYPE OF FACILITY: Dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$4,880; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Sanger Avenue, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: Rocky Point Estates Land Trust dba Rocky Point MHP Flower Mound; DOCKET NUMBER: 2007-0481-MWD-E; IDENTIFIER: RN101609972; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13732001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: \$5,540; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Sanger Avenue, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Seven Heights Corporation dba Mobil 1 Lube Express; DOCKET NUMBER: 2007-0348-PST-E; IDENTIFIER: RN100539998; LOCATION: Desoto, Dallas County, Texas; TYPE OF FACILITY: commercial oil change operation; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and make available for the inspection upon request by agency personnel; and 30 TAC §334.7(d)(3), by failing to provide an amended registration; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 2301 Sanger Avenue, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2007-0557-AIR-E; IDENTIFIER: RN104150123; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 260, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,000; Supplemental Environmental Project (SEP) offset amount of \$5,600 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2007-0573-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 48813, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 37884, Special Condition Number 6.A., Air Permit Number O-02313, Special Condition Number 1.A., 40 CFR §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to maintain a minimum net heating value of 200 British Thermal Units per standard cubic foot; 30 TAC §116.115(c) and

§122.143(4), Air Permit Number 37884, Special Condition Number 1, Air Permit Number O-02313, Special Condition Number 8.A., and THSC, §382.085(b), by failing to meet the maximum allowable emission rate of 0.65 pounds per hour for nitrogen oxide; and 30 TAC §§115.352(4), 115.783(5), 116.115(c), and 122.143(4), Air Permit Number 37884, Special Condition Number 8.E., Air Permit Number O-02313, Special Condition Number 8.A., 40 CFR §60.482-6(a)(1) and §60.562-2(a), and THSC, §382.085(b), by failing to seal an open-ended line with a second valve, blind flange, cap, or plug; PENALTY: \$34,670; Supplemental Environmental Project (SEP) offset amount of \$17,335 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program.; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: The Falls Municipal Utility District; DOCKET NUMBER: 2007-0572-MWD-E; IDENTIFIER: RN102080249; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013018001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the daily average permitted limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013018001, Sludge Provisions, by failing to submit monitoring results; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Trinity Industries, Inc.; DOCKET NUMBER: 2007-0605-AIR-E; IDENTIFIER: RN100225523; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: railcar refurbishing plant; RULE VIOLATED: 30 TAC §115.247(2) and §122.143(4), FOP Number O-01656, General Terms and Conditions and Special Terms and Conditions 5.C., and THSC, §382.085(b), by failing to provide monthly gasoline throughput on an annual basis; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01656, General Terms and Conditions and Special Terms and Conditions 6, NSR Permit Number 19705, Special Provision 8, and THSC, §382.085(b), by failing to operate Abrasive Cleaning Operation INTB-3 with a dust collection system in conjunction with sponge blasting; and 30 TAC §§122.143(4), 122.145(2)(A) and (B), and 122.146(5)(D), FOP Number O-01656, General Terms and Conditions, and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: \$12,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: Jannes Stoker dba Triple S Dairy; DOCKET NUMBER: 2007-0544-AGR-E; IDENTIFIER: RN102065737; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$1,860; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Jack Edwin Vanden Berge dba Vanden Berge Dairy Farm; DOCKET NUMBER: 2007-0545-AGR-E; IDENTIFIER: RN102073137; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$3,420; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Wildwood Property Owners Association; DOCKET NUMBER: 2007-0601-MWD-E; IDENTIFIER: RN101609758; LOCATION: Hardin County, Texas; TYPE OF FACILITY: wastewater

treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011184001, Effluent Limitations and Monitoring Requirements Numbers 2 and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011184001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: \$1,375; Supplemental Environmental Project (SEP) offset amount of \$1,100 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(40) COMPANY: City of Willow Park; DOCKET NUMBER: 2007-0744-MWD-E; IDENTIFIER: RN101920585; LOCATION: Willow Park, Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13834001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permit effluent limits; PENALTY: \$7,280; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200703191

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 24, 2007



#### Notice of Availability of the Draft July 2007 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2007 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft July 2007 WQMP update may be found on the commission's Web site located at [http://www.tceq.state.tx.us/nav/eq/eq\\_wqmp.html](http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 3, 2007. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [nvignali@tceq.state.tx.us](mailto:nvignali@tceq.state.tx.us).

TRD-200703188

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 24, 2007



#### Notice of a Public Meeting with the Texas Compliance Advisory Panel and the Texas Commission on Environmental Quality

The Texas Compliance Advisory Panel will be meeting with the Texas Commission on Environmental Quality's (TCEQ) Small Business and Environmental Assistance program on August 24, 2007 at 9:30 a.m. in Building F, Room 2210, at the Austin Central Offices of the TCEQ to discuss regulatory and policy issues of interest to small businesses regulated by the TCEQ.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information about the public meeting, please contact Melinda Houlihan at (512) 239-5832.

TRD-200703192

Robert Martinez

Director, Environmental Law

Texas Commission on Environmental Quality

Filed: July 24, 2007



#### Notice of Water Quality Applications

The following notices were issued during the period of July 12, 2007 - July 19, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to Texas Commission on Environmental Quality (TCEQ), Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC which operates the Greenspoint Service Center, which provides auxiliary services for the transmission and distribution of electric power, has applied for a renewal of TPDES Permit No. WQ0002596000, which authorizes the discharge of treated domestic wastewater, vehicle wash water, and cooling tower blowdown at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. The plant site is located at 2301 Gears Road, approximately 0.5 mile east of the intersection of Veterans Memorial Drive and Gears Road, north of the City of Houston, Harris County, Texas.

CITY OF HOUSTON has applied for a major amendment to TPDES Permit No. WQ0010495146 to authorize the increase of Final phase two-hour peak flow to 38,309 gallons per minute and to add an Interim phase with an annual average flow not to exceed 7,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,400,000 gallons per day. The facility is located north of the West Fork Arm of Lake Houston, approximately 4.5 miles east of U.S. Highway 59 between Bear Branch and Ben's Branch, approximately 7.75 miles northeast of the intersection of U.S. Highway 59 and Farm-to-Market Road 1960 in Harris County, Texas.

MEMORIAL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11893-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located west of the west property line of Barker Reservoir, which is south of a Harris County Flood Control District Ditch and approximately 14 miles south of Fry Road and Interstate Highway 10 in Harris County, Texas.

CITY OF PENELOPE has applied for a renewal of TPDES Permit No. 13621-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Farm-to-Market Roads 308 and 2114; adjacent to the northerly side of Farm-to-Market Road 2114; at the southeast edge of the City of Penelope in Hill County, Texas.

CITY OF SAN AUGUSTINE has applied for a renewal of TPDES Permit No. WQ0010268001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 5,000 feet northeast of the intersection of U.S. Highway 96 and Farm-to-Market Road 147 in San Augustine County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE which operates the Michael Meat Packing Plant, a meat processing and rendering plant, has applied for a renewal of Permit No. WQ0002072000, which authorizes the disposal of treated process wastewater, utility wastewater, and domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via irrigation of 116 acres of pasture land within the 22,000 acres of correctional farm. This permit will not authorize a discharge of pollutants into water in the State. The plant and the irrigation site are located at the Michael Unit correctional facility, west of Farm-to-Market Road 2054, approximately 5 miles southwest of the City of Tennessee Colony, Anderson County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION which operates the Texas Department of Transportation Municipal Separate Storm Sewer System (MS4), has applied to the TCEQ for a renewal of NPDES Permit No. TXS000402 to authorize storm water point source discharges to surface water in the state from the Texas Department of Transportation Municipal Separate Storm Sewer System. This permit will be issued as TPDES Permit No. WQ0004645000. The MS4 is located within the corporate boundary and the 5 mile extra-territorial jurisdiction (ETJ) of the City of Austin, and to all areas outside of the corporate boundary but within the recharge zone of the Barton Springs portion of the Edwards Aquifer, in Travis, Hays, and Williamson Counties, Texas.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process; please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703211

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 25, 2007



#### Notice of Water Rights Application

Notice issued on July 24, 2007.

APPLICATION NO 12144; Elmwood Bradley Oaks, L.P., 325 North Saint Paul Street, Suite 4850, Dallas, Texas 75201, Applicant, has applied for a Water Use Permit to construct and maintain a dam and reservoir (Lake Velma) on an unnamed tributary of Wolf Creek, Trinity River Basin, for in-place recreational, livestock, and wildlife purposes in Anderson County. The application and a portion of the required fees were received on December 12, 2006. Additional information and fees were received on February 27 and May 17, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 11, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "(I/we) request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703212

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 25, 2007



#### Revised Notice of District Petition

Notice issued on July 24, 2007.

TCEQ Internal Control No. 05292007-D11; Mehrdad Moayedi, (Petitioner) filed a petition for creation of Valencia on the Lake WCID (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Wachovia Bank National Association, on the property to be included in the proposed District; (3) the proposed District will contain approximately 448.0 acres located in Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the town of Little Elm, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 765, dated June 2006, the town of Little Elm, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$30,030,000.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "(I/we) request a contested

case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200703213

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 25, 2007

### Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Fort Worth	Darren Lackan MD PA DBA Diabetes and Thyroid Center of Fort Worth	L06074	Fort Worth	00	07/05/07
Midland	Midland Certified Reagent Company Inc	L06082	Midland	00	07/03/07
Mt Pleasant	TXU Mining Company Thermo Mine	L06087	Mt Pleasant	00	07/12/07
Wichita Falls	Venkateswarlu Thota MD	L06088	Wichita Falls	00	07/09/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	94	07/11/07
Austin	Austin Positron Emission Tomography LP DBA Austin PET & Imaging Center	L05861	Austin	04	07/05/07
Austin	Texas Oncology PA South Austin Cancer Center	L05108	Austin	15	07/06/07
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	95	07/04/07
Austin	Freescall Semiconductor Inc	L05347	Austin	08	07/12/07
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	37	07/05/07
Beasley	Hudson Products Corporation	L02370	Beasley	46	07/09/07
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	13	07/11/07
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	13	07/12/07
Borger	WRB Refining LLC DBA ConocoPhillips Company	L02480	Borger	50	07/12/07
Bremond	Altura Power LP	L04280	Bremond	12	07/11/07
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	91	07/03/07
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	09	07/04/07
Dallas	Baylor University Medical Center	L01290	Dallas	83	07/06/07
Dallas	Physician Reliance Network DBA Texas Cancer Center at Medical City Dallas	L05534	Dallas	09	07/10/07
Dallas	Landmark Radiation Dallas LP	L06075	Dallas	01	07/10/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	172	06/12/07
Deer Park	GK Techstar LLC DBA Techstar	L05562	Deer Park	08	07/12/07
Deer Park	Total Petrochemicals USA Inc	L00302	Deer Park	49	07/04/07
Denton	Denton Cancer Center LLP	L05945	Denton	02	07/03/07
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05774	El Paso	05	07/04/07
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	34	07/09/07
Fort Worth	Cooks Childrens Health Care System DBA Cook Childrens Medical Center	L04587	Fort Worth	11	07/11/07
Gatesville	Coryell County Memorial Hospital Authority DBA Coryell Memorial Hospital	L02391	Gatesville	29	06/12/07
Glen Rose	Glen Rose Medical Foundation Inc DBA Glen Rose Medical Center	L03225	Glen Rose	22	07/10/07



AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	Houston Cardiovascular Associates	L05070	Houston	13	07/05/07
Houston	New Medical Horizons II Ltd DBA Cypress Fairbanks Medical Center	L03424	Houston	30	07/04/07
Houston	Brainwaves Neuroimaging Clinic LLC	L05767	Houston	02	07/04/07
Houston	Texas Childrens Hospital	L04612	Houston	39	07/10/07
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	28	07/09/07
Houston	River Oaks Medical Center LP DBA Twelve Oaks Medical Center	L02432	Houston	48	06/12/07
Houston	Medi Physics Inc DBA GE Healthcare	L05517	Houston	14	07/03/07
Houston	Cambridge Heart Center PA	L05623	Houston	05	07/05/07
Houston	Nuclear Imaging Services LP	L05791	Houston	04	07/10/07
Humble	Madaiah Revana MD PA DBA Humble Cardiology Associates & Pacemaker Clinic	L03263	Humble	08	07/09/07
Katy	St Catherine Health and Wellness Center	L05310	Katy	13	07/06/07
La Porte	J V Industrial Co Ltd	L05785	La Porte	07	07/10/07
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	62	07/04/07
Lubbock	IBA Molecular North America Inc DBA IBA Molecular	L05482	Lubbock	12	07/10/07
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	35	06/12/07
Mesquite	Texas Oncology PA DBA Texas Cancer Center Mesquite	L05741	Mesquite	05	07/04/07
Midland	American X-ray & Inspection Services Inc DBA A X I S Inc	L05974	Midland	03	07/11/07
Mount Pleasant	DX Imaging LTD DBA Open Imaging of Mount Pleasant	L05445	Mount Pleasant	12	07/04/07
Nederland	Lucite International Inc	L06076	Nederland	01	07/06/07
Olney	Olney Hamilton Hospital District DBA Hamilton Hospital	L03226	Olney	16	07/10/07
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	41	07/10/07
Pasadena	Marathon Pipe Line LLC	L05303	Pasadena	07	07/11/07
Pasadena	Basell USA Inc	L01854	Pasadena	34	07/11/07
Pasadena	Equistar Chemicals LP	L04409	Pasadena	04	07/04/07
Plano	Texas Heart Hospital of the Southwest LLP DBA The Heart Hospital Baylor Plano	L06004	Plano	05	07/09/07
Port Lavaca	Memorial Medical Center in Calhoun County	L04685	Port Lavaca	08	07/11/07
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	23	07/09/07
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	41	07/05/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	231	07/10/07
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	156	07/05/07
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	57	07/05/07
San Antonio	UT Medicine San Antonio Nuclear Cardiology	L05410	San Antonio	08	07/04/07
Seymour	Baylor County Hospital District DBA Seymour Hospital	L03229	Seymour	17	07/04/07
Tatum	TXU Mining Company	L06081	Tatum	01	07/10/07
Temple	Texas A&M University System Health Science Center	L05494	Temple	09	07/09/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation DBA Scott and White Memorial Hospital	L00331	Temple	79	07/10/07
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	47	07/10/07
Texas City	BP Products North America Inc	L00254	Texas City	61	07/10/07
The Woodlands	VGX Pharmaceuticals	L05773	The Woodlands	05	07/04/07
Throughout Tx	TEAM Industrial Services Inc	L00087	Alvin	164	07/06/07
Throughout Tx	Southwestern Public Service Company DBA Xcel Energy	L05238	Amarillo	10	07/09/07
Throughout Tx	Global X-ray & Testing Corp	L03663	Aransas Pass	101	07/10/07
Throughout Tx	John E Hearne DBA Hearne Wireline Service	L05174	Asherton	05	07/10/07
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	130	07/11/07
Throughout Tx	Mikell Clifton Gallagher DBA Gallagher Materials Testing	L05897	Bryan	01	07/09/07
Throughout Tx	Chappell Hill Logging System Inc	L05522	Chappell Hill	03	07/10/07
Throughout Tx	CME Testing and Engineering Inc	L05263	College Station	08	07/10/07
Throughout Tx	DMG Equipment Co LTD DBA Pavers Supply Company	L04856	Conroe	08	07/10/07
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	35	07/09/07
Throughout Tx	IRISNDT	L04769	Deer Park	40	07/11/07
Throughout Tx	SGS North America Inc	L05796	Deer Park	03	07/11/07
Throughout Tx	Jaime Rojas DBA CQC Testing and Engineering	L05802	El Paso	05	07/11/07
Throughout Tx	H & H X-ray Services Inc	L02516	Flint	62	07/09/07
Throughout Tx	Professional Service Industries Inc	L00203	Houston	122	07/11/07
Throughout Tx	Alpha-Neutronics Inc	L05784	Houston	04	07/11/07
Throughout Tx	METCO	L03018	Houston	172	07/11/07
Throughout Tx	METCO	L03018	Houston	171	07/04/07
Throughout Tx	Testmasters Inc	L03651	Houston	25	07/09/07
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	23	07/09/07
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	129	07/10/07
Throughout Tx	D-Arrow Inspection Inc	L03816	Houston	80	07/10/07
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	133	07/06/07
Throughout Tx	Mas-Tek Engineering and Associates Inc	L04864	Longview	09	07/10/07
Throughout Tx	Western Anatec Inc	L04865	Nederland	72	07/06/07
Throughout Tx	Desert Industrial X-ray LP	L04590	Odessa	67	07/11/07
Throughout Tx	Cottons Inspection Service Inc	L02869	Odessa	18	07/11/07
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	23	07/03/07
Throughout Tx	Carrillo & Associates Inc	L05804	San Antonio	06	07/09/07
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	17	07/11/07
Throughout Tx	ConocoPhillips Company	L00337	Sweeny	49	07/11/07
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	48	07/10/07
Throughout Tx	APEX Geoscience Inc	L04929	Tyler	29	07/11/07
Throughout Tx	Grimes and Associates Consulting Engineers LP	L04616	Wolfforth	11	07/09/07
Tyler	Nutech Inc	L04274	Tyler	61	07/03/07
Tyler	Trinity Mother Frances Health System	L01670	Tyler	128	07/09/07
Weslaco	Knapp Medical Center	L03290	Weslaco	41	07/10/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Wichita Falls	Howmet Castings & Services Inc Alcoa Howmet Castings	L05106	Wichita Falls	11	06/11/07

## TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	General Electric Company DBA GE Consumer and Industrial	L03819	Dallas	17	07/10/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200703075  
Lisa Hernandez  
Deputy General Counsel  
Department of State Health Services  
Filed: July 19, 2007

press "1" then press "0", Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200703076  
Lisa Hernandez  
Deputy General Counsel  
Department of State Health Services  
Filed: July 19, 2007

### Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) issued Agreed Orders to the following registrants:

- James D. Pinkerton, D.D.S. (Registration Number R26166) of Spearman. A total penalty of \$1,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

- Doyle Chiropractic & Rehabilitation (Registration Number R22897) of Fort Worth. A total penalty of \$1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

- Everest Exploration, Inc. (License Number L03626) of Corpus Christi. A total penalty of \$2,500 shall be paid by registrant for alleged violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

- Rocky Mountain Chiropractic (Registration Number R18210) of Irving. A total penalty of \$1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

- Gulf Coast MRI & Diagnostics, Inc. (Registration Number R22530) of Houston. A total penalty of \$3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688,

## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 790, Transmittal Number 07-031, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent Medicaid payment reduction for Medicaid services delivered by Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors (LPCs), and Licensed Marriage and Family Therapists (LMFTs) that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid professional and outpatient facility services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in additional annual aggregate spending for federal fiscal year (FFY) 2007 of \$86,430, of which \$52,532 is federal expenditures and \$33,898 is state general revenue expenditures. For FFY 2008, the estimated spending is \$1,099,382, of which \$665,786 is federal expenditures and \$433,596

is state general revenue expenditures. For FFY 2009, the estimated spending is \$1,182,935, with \$714,729 in federal expenditures, and \$468,206 in state general revenue expenditures.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Christina Dyer, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1747; or by e-mail at christina.dyer@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703189  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 24, 2007

## **Texas Department of Housing and Community Affairs**

### **Notice of Disaster Preference for Section 8 Housing Choice Voucher Program**

On July 12, 2007 the Board of the Texas Department of Housing and Community Affairs approved for public comment an addition of a disaster preference to be included in the TDHCA Public Housing Agency Plan. The disaster preference will allow the Department to provide Housing Choice Vouchers promptly to individuals and families in communities impacted by a disaster which will include, but not be limited to, communities with a disaster declaration or documented extenuating circumstances such as imminent threat to health and safety. The preference will cover only the areas where the Department currently has oversight of the Section 8 program. Requests for the preference must be made within 90 days of the disaster and may result in the disaster impacted person or family receiving assistance before someone currently on a waiting list.

Questions or requests for additional information may be directed to Willie Faye Hurd, Section 8 Program Manager, Community Affairs Division at whurd@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. Comments must be received by 5:00 p.m., Friday, August 31, 2007.

TRD-200703222  
Michael G. Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: July 25, 2007

## **Texas Department of Insurance**

### **Company Licensing**

Application to change the name of PENINSULAR LIFE INSURANCE COMPANY to SIGNIFICA INSURANCE GROUP, INC., a foreign life, accident and/or health company. The home office is in Wilkes-Barre, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200703220

Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: July 25, 2007

## **North Central Texas Council of Governments**

### **Request for Proposals to Assist in the Monitoring and Development of the North Central Texas Regional Outer Loop/Rail Bypass Study**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to assist in the monitoring and development of the North Central Texas Regional Outer Loop/Rail Bypass Study. Consultant assistance includes providing quality assurance and quality control for this corridor refinement study with the goal of minimizing costs and time associated with technical, compliance, and public communication aspects of the overall project while maintaining a high level of quality in the overall planning process. Technical aspects include demographic and commodity data, roadway and freight rail modeling, and basic roadway/freight rail geometrics. Compliance aspects include ensuring all activities are consistent with federal and State requirements related to mobility planning, corridor environmental clearance and linking regional mobility planning and corridor study processes. Public communication aspects include assisting in the preparation of technical presentations and briefing materials to a wide variety of the potentially impacted parties. A final key item to achieving this goal will be coordinating technical efforts of multiple consultant teams and government agencies working on different aspects of the Regional Outer Loop/Rail Bypass. Engineering services are required for this project.

#### **Due Date**

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, September 14, 2007, to Mike Sims, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

#### **Contract Award Procedures**

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### **Regulations**

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200703210  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: July 25, 2007

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on July 20, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 34541 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34541.

TRD-200703201  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 24, 2007

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on July 20, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc., d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34539 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34539.

TRD-200703199  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 24, 2007

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on July 20, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc., d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34542 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34542.

TRD-200703202  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 24, 2007

◆ ◆ ◆  
**Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on July 20, 2007, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC d/b/a Suddenlink Communications for a State-Issued Certificate of Franchise Authority, Project Number 34540 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the unincorporated areas of Harris County, Montgomery County, Polk County, San Jacinto County, Trinity County, and Washington County.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34540.

TRD-200703200  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 24, 2007

◆ ◆ ◆  
**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 17, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Juice Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34521 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 10, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34521.

TRD-200703090

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 20, 2007



#### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on July 19, 2007, with the Public Utility Commission of Texas for an amendment to certificated service area boundaries in Collin County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment between the McKinney and Princeton and McKinney and Prosper Exchanges. Docket Number 34531.

The Application: AT&T Texas filed an application for a couple of minor boundary amendments between the McKinney and Princeton exchanges and the McKinney and Prosper exchanges within Collin County, Texas. This boundary amendment is being requested to create more clearly-defined physical boundaries in these exchanges to accommodate the expansion of development and more accurately reflect the way service is currently being provisioned to existing customers in these areas.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 10, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34531.

TRD-200703206

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 24, 2007



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 19, 2007, Cbeyond Communications of Texas, L.P. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60394. Applicant intends to amend its application to reflect a change in corporate restructuring and a name change.

The Application: Application of Cbeyond Communications of Texas, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34532.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 8, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34532.

TRD-200703203

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 24, 2007



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 18, 2007, Ohio First Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60772. Applicant intends to reflect a change in ownership/control.

The Application: Application of Ohio First Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34526.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 8, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34526.

TRD-200703205

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 24, 2007



#### Notice of Application for Relinquishment of Service Provider Certificate of Operating Authority

On July 20, 2007, Phone City Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 34534. Applicant intends to relinquish its certificate.

The Application: Application of Phone City Communications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 34534.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 8, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34534.

TRD-200703204  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 24, 2007

Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 2007

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### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 17, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Access2go, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 34524 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas, Verizon Southwest, and Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 8, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34524.

TRD-200703091  
Adriana A. Gonzales

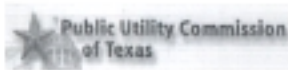
◆ ◆ ◆

### Request for Comments on Proposed Form Relating to One-Time Bill Payment Assistance Program

The Public Utility Commission of Texas (commission) proposes this application form in conjunction with its proposed new P.U.C. Substantive Rule §25.455, relating to One-Time Bill Payment Assistance Program. This application form would be used by a residential electric customer who seeks assistance under proposed P.U.C. Substantive Rule §25.455 and who is, or who has in his or her household, a low-income person who is seriously ill or disabled, and whose health or safety may be injured by the disconnection of electric service for non-payment.

The Commission invites comments on this application form from interested parties. Comments on this application form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be received by Monday, September 10, 2007. Reply comments may be submitted, and must be received by Tuesday, September 25, 2007. Sixteen copies of comments and reply comments must be filed. Comments and reply comments may be filed with and at the same time as comments and reply comments on the proposed rule language. All responses should reference Project Number 33811.

Questions concerning this form should be referred to Jonathan Griffin, Retail Market Analyst, Electric Industry Oversight Division, (512) 936-7378. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.



**Public Utility Commission of Texas (PUC)**  
**One-Time Electric Bill Payment Assistance for**  
**Seriously Ill and Disabled Low-Income Persons**

**About the One-Time Bill Payment Assistance Program**

The One-Time Bill Payment Assistance Program provides electric bill payment assistance to customers who are, or have residing in their household, a low-income person who is seriously ill or disabled, and whose health or safety may be injured by the disconnection of electric service. Eligible customers may receive assistance through this program one time per calendar year. To apply for assistance, customers must fill out this form, meet the requirements indicated in this form, provide any necessary additional materials, and submit the form to the address indicated below.

**Directions**

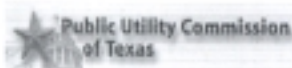
To apply to receive one-time bill payment assistance for electric service, please verify eligibility by completing the following steps. To qualify, the customer must be, or have residing in the household, a seriously ill or disabled low-income person whose health or safety may be injured by disconnection of electric service. The customer must also have received a notice from the Retail Electric Provider (REP) that service will be disconnected for non-payment. For questions, call LITE-UP Texas toll-free at 1-800-241-7011.

1. Include one copy each of the disconnection notice and the most recent electric bill.
2. Fill out Part A, Customer Information. The customer must be the person listed on the electric bill.
3. Fill out Part B, Seriously Ill or Disabled Person's Information. The attending physician of the seriously ill or disabled person should fill out and sign the Physician's Statement.
4. If you are unable to check the box in Part B, complete Part C, Determination of Income Eligibility, for the person listed in Part B. The ill or disabled person must qualify as a low-income person for the customer to receive this assistance.
5. The customer must sign and date the form in Part D, Declaration.
6. Include documents to support the programs or income reported in Part C.
7. Mail the application to:  
**LITE-UP Texas**  
**1779 Wells Branch Pkwy**  
**Suite 110B #320**  
**Austin, TX 78728-7022**

**You must provide a copy of the disconnection notice and the most recent electric bill with this application. Please submit photocopies of all documents. Original documents will not be returned.**

Qualification pursuant to this form does not guarantee an uninterrupted power supply. If electricity is a necessity, you may need to make other arrangements. The information on this form may be subject to verification, and additional information may be required from you or your physician. This assistance is available to eligible customers one time per calendar year.





**A. Customer Information.** The customer must be the person listed on the electric bill.

First Name Mr., Mrs., Ms.	MI	Last Name	Social Security Number - -
Street Address		Apartment #	Telephone Number ( )
City	State TX	Zip Code	
ESI ID (as it appears on your electric bill)			

**B. Seriously Ill or Disabled Person's Information.** If the customer is the ill or disabled person, write "same as above."

First Name Mr., Mrs., Ms.	MI	Last Name
Social Security Number - -	Telephone Number ( )	

- ☐ If the customer is the ill or disabled person, and the customer receives the low-income discount on his or her monthly electric bill, check here. If you check this box, you do not need to fill out Part C.

**Physician's Statement**

*This portion must be completed by the physician \* of the seriously ill or disabled person listed above.*

Physician Name: \_\_\_\_\_

Physician Address: \_\_\_\_\_

Physician Phone Number: \_\_\_\_\_

Medical diagnosis, indicating that this person is seriously ill or disabled: \_\_\_\_\_

Could the loss of electric service to the seriously ill or disabled person's household cause injury to the health or safety of that person? If so, please indicate how.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By my signature, I certify that the person named in Part B of this form is seriously ill or disabled, and that the disconnection of electric service to that person's household could injure the health or safety of that person.

Physician Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\* The attending physician may be any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

**C. Determination of Income Eligibility.** For the seriously ill or disabled person in Part B, above, complete either Part C.I or Part C.II. However, if you were able to check the box in Part B, you do not need to fill out Part C.

**I. Program-Based Eligibility Worksheet.** Enrollment of the seriously ill or disabled person from Part B in any one of the programs listed below will qualify that person as low-income for the purpose of this program.

- ☐ Food Stamps                      ☐ Qualified Medicare Beneficiary (QMB)                      ☐ Temporary Assistance to Needy Families (TANF)  
☐ Medicaid                      ☐ Supplemental Security Income (SSI)

If you checked one of the boxes above, you must attach a copy of a notice of eligibility for the program(s) in which you are enrolled.

**II. Income-Based Eligibility Worksheet.** If the household's income is equal to or lower than the amounts listed below (corresponding to household size), the seriously ill or disabled person from Part B will qualify as low-income for the purpose of this program.

Please indicate total household size (1) and household income (2), including the income, from all sources, of all adult persons residing in your home. To determine the amount of income in each category, enter the amount(s) shown on the check or benefit statement.		<b>Income-Based Eligibility Key</b> If your household income is equal to or lower than the amounts listed below, corresponding to your household size, check the box at the bottom of this section.			
(1) How many people reside in your household, including children? _____					
(2) Income calculation:	Amount per week / month / year (circle one)	Household Size	Yearly Income	Monthly Income	Weekly Income
Wages from employment as shown on pay stub or W-2 Form		1	\$12,763	\$1,064	\$245
Social Security		2	\$17,113	\$1,426	\$329
Retirement Income		3	\$21,463	\$1,789	\$413
Alimony or Child Support		4	\$25,813	\$2,151	\$496
Unemployment or Workers Compensation		5	\$30,163	\$2,514	\$580
All Other Earnings		6	\$34,513	\$2,876	\$664
		7	\$38,863	\$3,239	\$747
		8	\$43,213	\$3,601	\$831

**Note:** The Low-Income Discount Administrator (LIDA) will compute total income for the applicant.

If you have completed Part C.II, you must provide proof of household income. To do so, attach a copy of all of the following that apply, for each adult member of your household: (1) The most recent pay stub(s) from all employers covering the period of two months, (2) the most recently filed tax return or W-2, (3) a signed letter from each employer indicating wage level, (4) documentation of social security income, (5) an unemployment form with eligibility dates, (6) the two most current unemployment checks, (7) the most recent bank statement showing direct deposit of income.

**D. Declaration.** By signing this form, I certify that the information I have provided in this application is true and correct. I certify that the seriously ill or disabled low-income person listed in Part B does in fact reside in my household. I understand that the information provided is subject to audit and investigation by the Public Utility Commission of Texas.

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Have you completed?**

- ☐ Part A  
☐ Part B, including the physician's statement and signature  
☐ Part C.I or Part C.II, if you could not check the box in Part B to indicate enrollment in the low-income electric discount program
- ☐ Part D, signed by the electric customer  
☐ Attached documentation for Part C  
☐ Attached one copy each of disconnection notice and the most recent electric bill

◆ ◆ ◆  
**Request for Proposals to Assist the Public Utility Commission of Texas with the Day to Day Operation of the ERCOT Wholesale Electricity Market and Implementation of the Nodal Market Design**

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) for major consulting services. The consultant will assist the PUCT with the day-to-day operation of the Electric Reliability Council of Texas (ERCOT) wholesale electricity market and implementation of the nodal market design. This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA), Chapter 39.

To be considered, the proposals must arrive at the PUCT on or before the deadline stated on the RFP. This deadline is available on the PUCT website [www.puc.state.tx.us](http://www.puc.state.tx.us). The vendor must be prepared to begin providing services on or around September 4, 2007.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal or to submit a proposal jointly with a non-HUB entity.

**Project Description.** The Contractor will:

1. Advise the commission staff with respect to implementing the new Texas nodal market design. This includes assistance to the commission staff in identifying instances in which electric wholesale market design features are flawed, create opportunities for anti-competitive behavior, or do not represent best practices in wholesale market; and interacting with ERCOT stakeholders regarding new or previously-identified issues.
2. Advise the staff in evaluating the performance of energy-only resource adequacy mechanism, assist the staff in assessing the adequacy of resources in the ERCOT wholesale market, and identify ways to provide better economic incentives to ensure adequate resources in Texas.
3. Assist commission staff in evaluating the existing scarcity pricing mechanism and defining the boundary between market power abuse and legitimate scarcity pricing.
4. Advise the commission staff in projects, including Project Number 32853 *Evaluation of Demand Response Programs in the Competitive Electric Market*, and resulting demand response programs, such as ERCOT Emergency Interruptible Load Service (EILS), and their implementation in Texas electric markets. This includes working with the staff to evaluate the need for additional demand response programs, provide advice on the design of such programs, and assist the staff in its interaction with ERCOT stakeholders.
5. Advise the commission staff in evaluating the economic efficiency of the ancillary service markets and assist the staff in interacting with ERCOT stakeholders to address potential shortcomings in these markets within the Texas nodal design.
6. Assist commission staff in developing Protocol Revision Requests as needed and provide feedback and improvements on stakeholder-sponsored Protocol Revision Requests intended to improve the ERCOT Protocols.

7. Inform commission staff regarding state of art methods and mechanisms used in other electricity markets in detecting anti-competitive behavior relating to the scheduling and operation of generation or transmission facilities.

8. Advise commission staff on application of appropriate industry specific mathematical/quantitative models, particularly regarding the application of such models and their effectiveness in addressing concerns regarding generation economic dispatch and transmission load flow issues.

9. As needed, review and provide comments on market related commission reports, which include daily, monthly, quarterly, and annual reports.

10. Provide advice on technical issues and concerns raised by commissioners or staff.

11. Be available to participate in a teleconference with staff to address areas of concerns.

12. Meet with commission staff and participate in meetings of the commission or ERCOT stakeholder groups to address ERCOT wholesale market issues (up to three trips to Austin).

13. Securely maintain confidential information that may be provided for review and analysis as a result of work performed under this agreement.

**Selection Criteria.** The PUCT shall make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the requested services as evidenced by the following:

proposer's description of its plan to provide the services, understanding of the issues related to this engagement, and understanding of the scope of this engagement;

proposer's experience in analyzing issues related to the design of wholesale electricity markets, particularly the ERCOT market;

proposer's previous history, if any, working with the PUCT;

whether proposer is a HUB or a business affiliation that includes a HUB; and

issues related to conflicts of interest, if any, and on the reasonableness of the proposed fee.

All other factors being equal, preference will be given to a proposer whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

**Requesting the Proposal.** A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by e-mail [ben.delamater@puc.state.tx.us](mailto:ben.delamater@puc.state.tx.us). You may also download the RFP from the PUC website [www.puc.state.tx.us](http://www.puc.state.tx.us), by choosing "Procurement/HUB" from the menu on the right, and from the Electronic State Business Daily website at <http://esbd.tbpc.state.tx.us>.

**Deadline for Receipt of Proposals.** Proposals must be received on or before the deadline stated on the RFP in the Public Utility Commission of Texas Central Records Division. Proposals received after the deadline will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. In determining the time and date of receipt, the commission will rely solely on the time/date stamp of Central Records. Proposals should be filed under Project Number 23100.

TRD-200703221

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 25, 2007

## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

**[www.txdot.gov/about\\_us/public\\_hearings\\_and\\_meetings/aviation.htm](http://www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm)**

Or visit **[www.txdot.gov](http://www.txdot.gov)**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200703207

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 25, 2007

### Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters related to the innovative financing and development of transportation projects, including the use of public/private partnerships, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

**Description:** The department is a state agency granted powers under Transportation Code, Chapter 227, to plan and construct a set of intermodal transportation facilities that will be known as the Trans-Texas Corridor and will integrate highway, rail, and utility components. The department is also authorized under Transportation Code, Chapter 223, to construct, maintain, repair, operate, extend, or expand toll projects on the state highway system. Transportation Code, Chapter 223, Subchapter E, and Transportation Code, §227.023, authorize the department to enter into comprehensive development agreements with private entities for the acquisition, financing, design, construction, maintenance and/or operation of facilities on the Trans-Texas Corridor and department toll projects.

The department intends to engage outside counsel to advise and represent the agency in connection with the development of transportation projects (including, without limitation, highway, toll, transit, rail, intermodal, and other related transportation facilities), comprehensive development agreements, and other public/private partnerships. Outside counsel will provide advice to the department in these areas, including providing legal advice and support on the terms of comprehensive development agreements and drafting, negotiating and adminis-

tering comprehensive development agreements, as well as legal issues involved in using public/private partnerships for the development of transportation projects, including procurement processes and innovative financing options and the implementation and structuring thereof. Outside counsel shall review legislation when requested by the department, recommend legislative action where appropriate and assist with drafting of legislation at the state and federal level. Accordingly, the department invites responses to this RFP from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to public/private partnerships for the development of transportation projects and the innovative financing of those projects is required.

**Responses:** Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal services in the matters described previously, the names, experience, education and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

**Note:** The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

**Format and Person to Contact:** Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker in the Office of General Counsel at (512) 463-8630.

**Deadline for Submission of Response:** All proposals must be received by the General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, no later than 5:00 p.m. on August 31, 2007.

TRD-200703208

Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: July 25, 2007

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**University of North Texas System**

**Notice after Amending Consulting Contract**

In accordance with Chapter 2254 of the Texas Government Code, the University of North Texas System ("UNT System") has amended a major consulting services contract related to federal government relations.

In addition to services already provided for in the consulting contract, the consulting firm will assist UNT System and its member institutions in connection with research objectives and strategies to assist UNT System in presenting and utilizing the available resources of the UNT System in connection with the University of North Texas Center for Advanced Research and Technology.

The name and business address of the consultant is:

Congressional Solutions, Inc.  
1530 N. Key Blvd., Suite 523  
Arlington, Virginia 22209

UNT System will pay a consulting fee for the additional services not to exceed \$7,500.00 per month for the remainder of the contract term. The term of the consulting contract began September 1, 2006, and will end August 31, 2008.

TRD-200703080  
Joey Saxon  
Director of Purchasing and Payment Services  
University of North Texas System  
Filed: July 19, 2007

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**WorkSource of the Coastal Bend (Coastal Bend Workforce Development Board)**

**Request for Proposals for Childcare Services**

The Coastal Bend Workforce Development Board, the Board, is a non-profit, tax-exempt organization that oversees workforce development programs in the 12 county Coastal Bend region and is comprised of 34 members. The Board receives funding from the Texas Workforce Commission.

The Coastal Bend Workforce Development Board assumed the duty for childcare services from the Texas Workforce Commission on September 1, 1998. In an effort to subsidize affordable childcare at an equitable rate, the Board will need to retain the services of a childcare agency which can deliver these services to the public on the Board's behalf.

For this reason, the Board is seeking a contractor for the operation of the Childcare Services portion of the program. This procurement will not include any provider management functions or processing of payments to providers. The contractor selected through this procurement will be required to provide the requested services in an environment of declining federal funding.

Interested Parties may obtain a copy of the Request for Proposals by calling Ramiro Hoyos at (361) 225-1098, extension 115.

**The deadline for receipt of proposals is 12:00 NOON, August 29, 2007. FAXED proposals are not acceptable. Responses must be mailed or hand delivered. Responses received after the deadline will not be considered.**

The Board is an Equal Opportunity employer/program. Historically Underutilized Businesses are encouraged to apply. Auxiliary aids and services are available upon request to individuals with disabilities. Telephone access is available by dialing 711.

TRD-200703149  
Blair McDavid  
Manager of Procurement/Contracts  
WorkSource of the Coastal Bend (Coastal Bend Workforce Development Board)  
Filed: July 23, 2007

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).